

volume 4

Pages 581 - 790

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

DIGITAL REG OF TEXAS, LLC)	
)	
Plaintiff,)	NO. C-12-1971 CW
)	
VS.)	THURSDAY, AUGUST 28, 2014
)	
ADOBE SYSTEMS, INC., ET AL.,)	OAKLAND, CALIFORNIA
)	
Defendants.)	JURY TRIAL
_____)	

Before The Honorable CLAUDIA WILKEN, Judge

REPORTER'S TRANSCRIPT OF PROCEEDINGS

APPEARANCES:

For Plaintiff:

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ALSO PRESENT:

MICHAEL FARLEY, COMPANY REPRESENTATIVE

(APPEARANCES CONTINUED)

Reported By:

Diane E. Skillman, CSR 4909, RPR, FCRR
Official Court Reporter

TRANSCRIPT PRODUCED BY COMPUTER-AIDED TRANSCRIPTION

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**FOR DEFENDANT
ADOBE SYSTEMS:**

WEILL, GOTSHAL & MANGES, LLP
201 REDWOOD SHORES PARKWAY
REDWOOD SHORES, CALIFORNIA 94065
BY: EDWARD R. REINES, ESQUIRE
SONAL N. MEHTA, ESQUIRE
BYRON BEEBE, ESQUIRE
ANANT PRADHAN, ESQUIRE

ALSO PRESENT:

PAUL BETLEM, COMPANY REPRESENTATIVE
KAREN ROBINSON, IN-HOUSE COUNSEL

I N D E X

PLAINTIFF'S WITNESS:**PAGE****VOL.****DEVANBU, PREMKUMAR**

DIRECT EXAMINATION BY MR. DINOVO (RESUMED) 585 4

CROSS-EXAMINATION BY MS. MEHTA 632 4

REDIRECT EXAMINATION BY MR. DINOVO 686 4

RECROSS-EXAMINATION BY MS. MEHTA 694 4

DEFENDANT'S WITNESS:**WICKER, STEPHEN**

DIRECT EXAMINATION BY MS. MEHTA 701 4

CROSS-EXAMINATION BY MR. DINOVO 753 4

PLAINTIFF'S EXHIBITS:**EVD.****VOL.**

4 (PG. 232) 740 4

65 616 4

67 617 4

DEFENDANT'S EXHIBITS:

360 735 4

505 (PGS. 1432 & 1449) 738 4

1 THURSDAY, AUGUST 28, 2014

10:40 A.M.

2 P R O C E E D I N G S

3 **THE CLERK:** REMAIN SEATED. COME TO ORDER. COURT IS
4 IN SESSION.

5 **THE COURT:** GOOD MORNING.

6 **MR. DINOVO:** GOOD MORNING.

7 **THE CLERK:** READY FOR YOU.

8 (PROCEEDINGS HELD IN THE PRESENCE OF THE JURY.)

9 **THE COURT:** PLEASE BE SEATED.

10 GOOD MORNING, LADIES AND GENTLEMEN. SORRY FOR THE LATE
11 START. WE WILL END AT 3:30 ANYWAY. WE HAVE THE WITNESS ON
12 THE STAND UNDER DIRECT EXAMINATION.

13 **MR. DINOVO:** THANK YOU, YOUR HONOR.

14 MS. MASON, IF YOU CAN PLEASE PUT ON PRESENTATION SLIDE 14?

15 (PUBLISHED TO JURY.)

16 **MS. MEHTA:** YOUR HONOR, JUST ONE ISSUE BEFORE WE GET
17 INTO TESTIMONY. WE SUBMITTED A PROPOSAL YESTERDAY REGARDING
18 THE ISSUE THAT WAS DISCUSSED WITH THE COURT AT THE END OF THE
19 TESTIMONY ABOUT THE YES/NO INDICATOR.

20 **THE COURT:** I HAVE NOT LOOKED AT IT.

21 **MS. MEHTA:** OKAY.

22 **THE COURT:** GO AHEAD.

23 **MR. DINOVO:** YOUR HONOR, THE JUROR SEEMS TO HAVE A
24 QUESTION. SHOULD I --

25 **THE COURT:** OH.

(QUESTION HANDED TO COURT.)

THE COURT: GO AHEAD.

MR. DINOVO: THANK YOU.

DIRECT EXAMINATION RESUMED

BY MR. DINOVO:

Q. ALL RIGHT, SIR. LET'S TRY TO GET OURSELVES BACK IN THAT PLACE. IT HAS BEEN A FULL NIGHT NOW. SO WE WERE --

THE COURT: THE JURY CAN'T HEAR THE TESTIMONY, SO YOU ARE GOING TO NEED TO KEEP YOUR VOICE RIGHT NEXT TO THE MICROPHONE AND LISTEN FOR IT. AND DON'T TURN YOUR HEAD AWAY FROM IT.

OKAY. GO AHEAD.

BY MR. DINOVO:

Q. ALL RIGHT, DR. DEVANBU. SO WE WERE TALKING, WERE WE NOT, ABOUT THE '541 PATENT AND THE LIVECYCLE PRODUCT?

A. THAT'S RIGHT.

Q. OKAY. AND ON YOUR MONITOR YOU CAN SEE THE STEP THAT WE WERE TALKING ABOUT, WHICH WAS A METHOD FOR REGULATING ACCESS TO DIGITAL CONTENT?

A. THAT'S CORRECT.

Q. AND, SPECIFICALLY, THIS FIRST STEP.

A. RIGHT.

Q. DID YOU EVALUATE THE LIVECYCLE PRODUCT TO ASCERTAIN WHETHER OR NOT IT SATISFIES THIS FIRST STEP?

A. YES, I DID.

1 Q. WHY DON'T YOU TELL US AT A HIGH LEVEL WHAT THIS SLIDE 15
2 REPRESENTS?

3 A. SO, WHEN A DOCUMENT IS OPENED THAT'S UNDER THE CONTROL OF
4 LIVECYCLE, THERE ARE EXECUTABLE INSTRUCTIONS THAT FIRST
5 COLLECT, AND THEN TRANSMIT NOTIFICATION INFORMATION. AND IF
6 THE TRANSMISSION IS SUCCESSFUL, THEN THE ACCESS IS GRANTED TO
7 OPEN THE FILE. AND IF THE TRANSMISSION IS NOT SUCCESSFUL,
8 THEN WE DO NOT GRANT ACCESS.

9 Q. THANK YOU.

10 SO WHAT DOES THIS NEXT SLIDE SHOW, DR. DEVANBU?

11 A. SO WHEN A PRODUCT IN THE ACROBAT FAMILY ATTEMPTS TO OPEN A
12 PROTECTED FILE, A FILE THAT'S PROTECTED IN THE LIVECYCLE
13 RIGHTS MANAGEMENT, IT FIRST INITIALIZES A SECURITY SESSION
14 WITHIN THE SECURITY SESSION.

15 IT CHECKS TO SEE IF IT HAS GOT A LOCALLY CACHED VOUCHER. A
16 CACHE IS JUST A TEMPORARY LOCAL STORAGE. SO IT CHECKS IN THE
17 LOCAL STORAGE TO SEE IF IT HAS GOT A VOUCHER. AND IF THE
18 VOUCHER IS AVAILABLE, IT USES THE VOUCHER TO GRANT PERMISSION.
19 AND IF NOT, IT GOES AND ASKS THE SERVER.

20 Q. ALL RIGHT, SIR. THIS CACHE, IS THAT RELEVANT TO THE USE
21 OF LIVECYCLE ONLINE OR OFFLINE?

22 A. IT IS USED IN BOTH CASES.

23 Q. SO WHAT IS SHOWN ON THIS SLIDE, SIR?

24 A. SO, WHAT IS SHOWN HERE IS THE CODE CITATIONS THAT ARE
25 RELEVANT TO THIS PROCEDURE. SO FUNCTIONING BEGINS WITHIN THIS

1 EDC. EDC, I BELIEVE, WAS THE OLD NAME FOR THIS PRODUCT. AND
2 SO MANY OF THE FUNCTIONS AND THE METHODS ARE IN FILES THAT MAY
3 BEGIN WITH EDC.

4 SO FIRST A SESSION, INITIALIZED SESSION METHOD THAT IS
5 SHOWN HERE IS -- THAT I'M POINTING TO IS THE TOP BOX. IT
6 SHOWS WHERE THE -- IT SHOWS WHERE EVERYTHING STARTS. THE
7 SECURITY SESSION GETS INITIALIZED. AND WITHIN THAT SESSION
8 THERE IS A METHOD CALLED "REQUESTACCESS." AND THIS
9 REQUESTACCESS METHOD, UNDER SOME CONDITIONS, CALLS IT A
10 REQUESTACCESS ONLINE METHOD.

11 AND THE REQUEST ONLINE METHOD -- WE CAN PROCEED -- YES.
12 IT CALLS THIS GETCACHEDVOUCHER METHOD, WHICH CAN STORE THE
13 CACHE WITHIN THE SAME SESSION. AND IF THE CACHE IS AVAILABLE
14 IT PROCEEDS TO THE NEXT STEP, WHICH IS TO REQUEST A VOUCHER
15 FROM THE SERVER.

16 Q. YOU ARE SAYING IF THE VOUCHER IS PRESENT IN CACHE IT
17 REQUESTS IT FROM THE SERVER?

18 A. IF THE VOUCHER IS PRESENT IN THE CACHE, IT DOES NOT
19 REQUEST IT. I AM SORRY. IF THE VOUCHER IS PRESENT IN THE
20 CACHE, IT DOES NOT REQUEST IT FROM THE SERVER.

21 Q. SO WHEN DOES IT REQUEST IT FROM THE SERVER?

22 A. IF THE VOUCHER IS NOT PRESENT IN THE CACHE.

23 Q. I SEE. THANK YOU.

24 ALL RIGHT. LET'S TURN TO THE SECOND ELEMENT OF CLAIM 1 OF
25 THE '541 PATENT. IT SAYS:

1 "IF NOT REQUESTING PERMISSION FROM AN EXTERNAL SOURCE FOR
2 THE RESOURCE TO ACCESS THE DIGITAL CONTENT."

3 IN YOUR ANALYSIS, WHAT IS THE EXTERNAL SOURCE?

4 **A.** THE EXTERNAL SOURCE HERE WOULD BE THE LIVECYCLE RIGHTS
5 MANAGEMENT SERVER.

6 **Q.** AND DOES THIS CONTEMPLATE REQUESTING A PERMISSION FROM
7 THAT SOURCE?

8 **A.** THAT'S RIGHT.

9 **Q.** SO WHAT IS SHOWN HERE IN THIS FLOW CHART, SIR?

10 **A.** SO I'M POINTING AT THE SERVER HERE. ESSENTIALLY WHAT WE
11 TALKED ABOUT SO FAR IS THAT THE THREE STEPS THAT I'M POINTING
12 TO. OH, I THINK I SHOULDN'T BE USING THIS BECAUSE IT IS
13 REFLECTING OFF THE SCREEN AND GOING IN THE DIRECTION OF THE
14 JURY.

15 **Q.** ALL RIGHT. WELL, LET'S NOT USE IT, THEN. WHY DON'T YOU
16 NOT USE IT.

17 **A.** SO THE TOP RIGHT-HAND BOXES WITH THE FLOW CHART ARE THE
18 ONES WE ALREADY TALKED ABOUT. AND SO THAT WAS THE STEPS ONE
19 AND TWO WHERE WE CHECKED THE LOCAL CACHE AND ASK THE EXTERNAL
20 SOURCE. IF THAT IS NOT AVAILABLE, THEN WE REQUEST THE
21 EXTERNAL SOURCE. THAT'S THE RED BOX WITH THE LOCK ON IT.

22 **Q.** ALL RIGHT.

23 **A.** IF THAT DOESN'T WORK, WE REQUEST A SOURCE. AND THEN, FROM
24 THAT SOURCE WE GET A VOUCHER, WHICH SATISFIES A TOKEN
25 LIMITATION IN THIS CASE. AND THEN, BASED ON THE TOKEN WE

1 GENERATE A PERMISSION.

2 Q. SO LET'S TALK ABOUT THIS TOKEN A BIT AND THE DISCUSSION WE
3 HAD YESTERDAY ABOUT THE REQUIREMENTS FOR A TOKEN.

4 ASSUMING IT HAS TO BE A TOKEN THAT INDICATES ACCESS SHOULD
5 BE GRANTED OR INDICATES THAT, NO, ACCESS SHOULD NOT BE
6 GRANTED, IS THAT PRESENT IN THE VOUCHER?

7 MS. MEHTA: OBJECTION, YOUR HONOR. THIS IS GOING
8 BACK INTO THE TERRITORY OF ATTEMPTING TO REWRITE OR
9 RECHARACTERIZE THE CLAIM CONSTRUCTION.

10 THE COURT: WELL, THAT -- THAT AREA ISN'T OFF LIMITS.
11 IT'S JUST --

12 MS. MEHTA: THAT QUESTION WAS A CHARACTERIZATION.

13 THE COURT: BUT IT WAS A CORRECT ONE.

14 DID YOU HAVE ANY PROBLEM WITH WHAT WE TALKED ABOUT AND THE
15 OUTCOME OF YESTERDAY'S DISCUSSION?

16 MR. DINOVO: NO, YOUR HONOR. WE SUBMITTED
17 ALTERNATIVE PROPOSALS. I'M FINE WITH -- OBVIOUSLY, WE WOULD
18 PREFER OURS, BUT WE UNDERSTOOD THE COURT'S GUIDANCE AND THAT
19 IS WHY I'M TRYING TO MAKE HIS TESTIMONY RELEVANT OR ADDRESS
20 THE REVISED INSTRUCTION.

21 MS. MEHTA: AND THE PROBLEM WITH THAT, YOUR HONOR, IS
22 THAT THIS IS NOW THEY ARE TRYING TO ATTEMPT TO ADDRESS THAT
23 ISSUE. THEY ARE GOING OUTSIDE THE SCOPE OF HIS REPORT,
24 BECAUSE THERE IS NO DISCUSSION OF THAT IN HIS REPORT
25 WHATSOEVER, WHICH IS WHY THEY TRIED TO DO WHAT THEY DID

1 YESTERDAY.

2 SO WE WOULD ASK THAT YOUR HONOR READ THE CURATIVE
3 INSTRUCTION NOW.

4 **THE COURT:** OKAY. SO, I WANT -- DIDN'T GET A CHANCE
5 TO DO THIS EARLIER, BUT I WANTED TO CLARIFY THAT YESTERDAY THE
6 DIGITAL REG'S EXPERT, DR. DEVANBU, TESTIFIED THAT THE COURT'S
7 INTERPRETATION OF THE TERM "TOKEN" DID NOT EXPLICITLY REQUIRE
8 THAT IT INCLUDE -- THAT IT CONTAIN A YES/NO INDICATOR.

9 AND I WANTED TO EXPLAIN THAT I AND INTERPRETED THE TERM
10 "TOKEN," AS YOU WILL SEE IN YOUR PAPERS, TO MEAN A FILE
11 INDICATING WHETHER THE TRANSACTION HAS BEEN APPROVED AND
12 ACCESS SHOULD BE GRANTED.

13 THIS MAKES CLEAR THAT A TOKEN DOES NOT SIMPLY INDICATE
14 THAT ACCESS SHOULD BE GRANTED, BUT ALSO INCLUDES -- ALSO
15 CONTAINS A YES/NO INDICATOR EXHIBITING EITHER APPROVAL OR
16 REJECTION OF THE TRANSACTION.

17 YOU SHOULD DISREGARD ANY TESTIMONY THAT MY INTERPRETER OF
18 THE TERM "TOKEN" DOES NOT REQUIRE A YES/NO INDICATOR. SO AND
19 THEN IN TERMS OF THE INDICATION THAT THIS SUBJECT ISN'T
20 DISCUSSED IN THE EXPERT'S REPORT -- I KNOW I HAD IT YESTERDAY.
21 IF YOU CAN GIVE ME PAGE AND LINE WHERE IT IS, THEN I'LL TAKE A
22 LOOK.

23 **MR. DINOVO:** OF COURSE, YOUR HONOR. SO, WHAT WE
24 PREPARED YESTERDAY WERE CITES TO THE ADOBE ACROBAT FAMILY OF
25 PRODUCTS. AND SO WE HAD THOSE CITATIONS READY TO FILE.

1 **THE COURT:** THE QUESTION IS DISCUSSION OF THE YES/NO
2 INDICATOR.

3 **MR. DINOVO:** YES, YOUR HONOR. AND THIS WAS
4 ACTUALLY --

5 **THE COURT:** ALL I NEED IS A PAGE AND LINE WHERE IT IS
6 IN THE REPORT, AND IF IT ISN'T THEN YOU NEED TO GO ON TO
7 SOMETHING ELSE.

8 **MR. DINOVO:** OKAY. THIS WAS SOMETHING THAT WAS
9 BRIEFED BEFORE THE TRIAL, SO WE WILL PROVIDE THAT FULL BRIEF.

10 **MS. MEHTA:** YOUR HONOR, IT WAS NOT IN HIS REPORT.

11 **THE COURT:** WHAT I AM LOOKING FOR IS PAGE AND LINE OF
12 THE REPORT, AND IF THAT IS NOT HANDY, WHY DON'T YOU GO ON TO
13 SOME OTHER SUBJECT, AND WE WILL TAKE IT UP LATER?

14 **MR. DINOVO:** OF COURSE, YOUR HONOR.

15 **BY MR. DINOVO:**

16 **Q.** SO, DR. DEVANBU, IN YOUR REPORT, DID YOU ANALYZE WHETHER
17 OR NOT THE TOKEN WAS USED TO GENERATE A PERMISSION AT THE
18 CLIENT?

19 **A.** I DID.

20 **Q.** ALL RIGHT. AND THAT PERMISSION -- WHAT IS THE PURPOSE OF
21 THAT PERMISSION?

22 **A.** THE PERMISSION IS INFORMATION THAT ENABLES THE CLIENT TO
23 ACCESS THE SOURCE CODE.

24 **Q.** ALL RIGHT. IN YOUR REPORT, WHAT DO YOU IDENTIFY AS THE
25 "TOKEN"?

1 **A.** SO -- SO THE TOKEN -- IF I CAN EXPLAIN THIS -- THE TOKEN
2 IS ESSENTIALLY A COLLECTION OF INFORMATION THAT IS SENT FROM
3 THE SERVER TO THE CLIENT. A BUNCH OF BITS, RIGHT? AND AT THE
4 CLIENT A PERMISSION IS ANOTHER BUNCH OF BITS THAT ENABLES
5 ACCESS, RIGHT? FOR EXAMPLE, A KEY. OKAY?

6 SO THE INFORMATION THAT IS SENT CANNOT SIMPLY INCLUDE
7 THE -- DIRECTLY INCLUDE THE BITS THAT ARE USED TO GENERATE THE
8 PERMISSION OF THE CLIENT. BECAUSE IF IT DID, THEN SOMEBODY
9 WOULD SPY ON IT AND STEAL IT.

10 SO THERE HAS TO BE SOME -- SOMEBODY WOULD SPY ON THE BITS
11 THAT ARE SENT ALONG THE WIRE, FOR EXAMPLE, OR WIFI, AND SIMPLY
12 STEAL THOSE BITS, RIGHT?

13 SO THE INFORMATION THAT IS SENT FROM THE CLIENT -- FROM
14 THE SERVER TO THE CLIENT, HAS TO BE CHECKED AT THE CLIENT TO
15 MAKE SURE THAT IT'S FROM A REAL SOURCE. AND THE INFORMATION
16 THAT ENABLES ACCESS, THAT IS THE PERMISSION, HAS TO BE
17 EXTRACTED FROM IT.

18 **Q.** ALL RIGHT, SIR.

19 **A.** AND THAT'S TRUE IN THIS CASE.

20 **Q.** THAT WAS MY NEXT QUESTION. SO IN THE CONTEXT OF THE
21 LIFECYCLE ANALYSIS RELATIVE TO THE '541 PATENT, WHAT TOKEN DID
22 YOU IDENTIFY?

23 **A.** THE VOUCHER.

24 **Q.** ALL RIGHT. AND WHAT IS THE VOUCHER IN REAL WORLD TERMS?

25 **A.** SO THE VOUCHER INCLUDES INDICATIONS SUCH AS WHETHER THE

1 DOCUMENT HAS BEEN REVOKED. SO, FOR EXAMPLE, IT MIGHT BE THE
2 CASE THAT THE DOCUMENT IS NO LONGER VALID, BECAUSE DIFFERENT
3 DECISIONS ARE BEING MADE WITHIN THE ORGANIZATION. SO THE
4 VOUCHER MIGHT INDICATE:

5 "DON'T USE THIS DOCUMENT ANYMORE, BECAUSE IT HAS EXPIRED."

6 Q. ALL RIGHT.

7 MS. MEHTA: OBJECTION, YOUR HONOR. MOVE TO STRIKE.
8 THAT TESTIMONY IS OUTSIDE THE SCOPE OF HIS REPORT. HE DID NOT
9 TESTIFY WHETHER OR NOT THE VOUCHER HAS A TRANSACTION THAT'S
10 APPROVED OR NOT APPROVED, OR YES/NO. IN FACT, HE SAID HE
11 DIDN'T THINK THAT WAS A LIMITATION, AND HE DIDN'T APPLY IT.

12 MR. DINOVO: YOUR HONOR, CAN I ADDRESS THAT? SO, THE
13 TRANSACTION --

14 THE COURT: GIVE ME THE PAGE AND LINE OF HIS REPORT
15 AT WHICH HE DISCUSSES THIS.

16 MR. DINOVO: YES, OF COURSE.

17 MS. MEHTA: I WOULD DIRECT YOU TO -- IF IT IS
18 HELPFUL, I CAN DIRECT YOU TO A2 OF HIS REPORT AT PAGE 15 WHERE
19 HE SAYS:

20 "I UNDERSTAND THAT ADOBE IS PROPOSED THE TOKEN BE
21 CONSTRUED AS A FILE INDICATING WHETHER THE TRANSACTION HAS
22 BEEN APPROVED. THIS CORRECTION IS INCORRECT," SO ON AND ON SO
23 FORTH. HE DOES NOT ADDRESS THAT THAT LIMITATION IS MET. ALL
24 HE DOES IS CONTEST THAT IT IS A LIMITATION, WHICH IS
25 INCONSISTENT WITH THE COURT'S RULING.

1 **MR. DINOVO:** YOUR HONOR, IF I CAN ADDRESS THAT, I
2 THINK THIS IS A NONISSUE. THIS, AGAIN, WAS SUBJECT TO THE
3 PRETRIAL BRIEFING.

4 WHAT DR. DEVANBU SAID IN HIS REPORT IS HE DIDN'T THINK A
5 TRANSACTION SHOULD BE A COMMERCIAL TRANSACTION. ACTUALLY,
6 ADOBE IN ITS FOLLOWING BRIEF SAID THEY AGREED IT NEED NOT BE A
7 COMMERCIAL TRANSACTION.

8 AND THEN, THE COURT, IN ITS CLAIM CONSTRUCTION ORDER,
9 SAID:

10 "SINCE IT DOESN'T HAVE TO BE A COMMERCIAL TRANSACTION,
11 I'LL ACCEPT THE WORD 'TRANSACTION.'"

12 SO TRANSACTION --

13 **THE COURT:** THAT IS NOT THE ISSUE. WHY DON'T YOU GO
14 ON TO SOMETHING ELSE, AND WE CAN DISCUSS THIS AT ANOTHER TIME.

15 **MR. DINOVO:** OF COURSE.

16 **THE COURT:** YOU HAVE OTHER AREAS BESIDES THIS AREA
17 THAT YOU CAN DISCUSS?

18 **MR. DINOVO:** OF COURSE.

19 **BY MR. DINOVO:**

20 **Q.** ALL RIGHT, SIR. SO ONCE THE VOUCHER IS RECEIVED, WHAT
21 IS -- WHAT OCCURS AT THE CLIENT?

22 **A.** SO ONCE A VOUCHER IS RECEIVED, THEN BASED ON THE VOUCHER
23 SOME INFORMATION IS EXTRACTED FROM THE VOUCHER AND DECODED TO
24 PRODUCE THE PERMISSION TO ACCESS THE RESOURCE.

25 **Q.** ALL RIGHT. AND IN YOUR REPORT, WHAT IS THE PERMISSION

1 THAT YOU IDENTIFY?

2 **A.** SO -- SO THE PERMISSION THAT WE IDENTIFY IS A KEY THAT IS
3 USED TO DECRYPT THE DOCUMENT.

4 **Q.** SO WHAT IS SHOWN HERE ON SLIDE 21?

5 **A.** SO, ESSENTIALLY, WHAT WE ARE SHOWING HERE IS THAT THE CALL
6 TO -- CONTINUING FROM BEFORE, WE CALL GETCACHEDVOUCHER TO SEE
7 IF IT IS THERE AND IF IT'S LOCALLY STORED. IF IT IS NOT, WE
8 CALL GETVOUCHER TO REQUEST THE VOUCHER REMOTELY.

9 AND THE GETVOUCHER USES THE SOAP PROTOCOL, WHICH WE TALKED
10 ABOUT BRIEFLY YESTERDAY TO ACCESS THE DATA FROM THE REMOTE
11 SERVER.

12 **Q.** ALL RIGHT. THANK YOU.

13 WHAT IS SHOWN HERE ON SLIDE 22, SIR?

14 **A.** SO IF WE CAN HIT THE ADVANCE ONCE MORE. ONCE MORE. OKAY.

15 SO THIS IS -- BASICALLY SHOWS THE SECOND STEP. REQUESTING
16 THE VOUCHER FROM AN EXTERNAL SOURCE.

17 **Q.** ALL RIGHT? AND THESE ARE THE SOURCE CODE CITATIONS TO
18 THAT PROCESS?

19 **A.** THAT'S RIGHT.

20 **Q.** CAN YOU WALK US THROUGH SLIDE 23?

21 **A.** SO, YES. I THINK WE CAN ADVANCE IT. WE HAVE ALREADY
22 TALKED ABOUT THIS. OKAY.

23 **Q.** ALL RIGHT. LET'S TALK ABOUT -- WE TALKED TO AN EXTENT
24 ABOUT THE TOKEN. WHY DON'T WE MOVE ON TO THE FOLLOWING
25 ELEMENT?

1 **A.** THAT'S RIGHT. THE THIRD ELEMENT WAS RECEIVING THE TOKEN.
2 AND THEN, AFTER THAT, BASED ON THE RECEIVING TOKEN, EXECUTING
3 AN INSTALLATION PROCESS.

4 **Q.** ALL RIGHT. AND WHAT IS MATERIAL TO YOU ABOUT THIS
5 TESTIMONY THAT IS SHOWN HERE? I AM SORRY. I THINK I PASSED
6 THE SLIDE. SORRY.

7 **A.** SO, BASICALLY THE LIMITATION IS THAT BASED ON THE RECEIVED
8 TOKEN EXECUTING PROCESS THAT GENERATES AT THE CLIENT A
9 PERMISSION. SO BASED ON THE RECEIVED TOKEN EXECUTING AN
10 INSTALLATION PROCESS THAT GENERATES AT THE CLIENT A
11 PERMISSION.

12 SO THE DOCUMENT KEY IS WITHIN THE VOUCHER. AND DEPENDING
13 WHETHER IT IS ONLINE OR OFFLINE, THE VOUCHER ARRIVES IN AN
14 ENCRYPTED FORM IN DIFFERENT SETTINGS IN SLIGHTLY DIFFERENT
15 WAYS.

16 SO THAT INFORMATION IS EXTRACTED FROM THE VOUCHER. THE
17 KEY INFORMATION IS EXTRACTED FROM THE VOUCHER, AND THAT'S WHAT
18 SATISFIES THIS STEP.

19 **Q.** THANK YOU. ALL RIGHT. WHAT IS SHOWN HERE ON THIS ADOBE
20 DOCUMENT, PLAINTIFF'S EXHIBIT 55?

21 **A.** OKAY. SO THIS DOCUMENT DESCRIBES WHAT HAPPENS IN THE CASE
22 THAT THE DOCUMENT IS ENABLED FOR VIEWING OFFLINE. IN OTHER
23 WORDS, MAYBE IT IS A CRITICAL DOCUMENT, BUT YOU WOULD STILL
24 LIKE THE ENGINEERS TO TAKE THE DOCUMENT WITH THEM ON A PLANE,
25 FOR EXAMPLE.

1 BUT EVEN ON THE PLANE WE WOULD LIKE THEM TO VIEW THE
2 DOCUMENT WHEN THEY HAVE NO INTERNET ACCESS. WE WOULD LIKE
3 THEM TO VIEW THE DOCUMENT WITH UNDER CONTROL OF SOME POLICIES.

4 THIS IS CALLED AN "OFFLINE MODE." IN OFFLINE MODE, THE
5 OFFLINE VOUCHER HAS WITHIN IT A KEY THAT IS ENCRYPTED WITH
6 SOMETHING CALLED "A PRINCIPAL KEY."

7 THE PRINCIPAL KEY IS THE KEY ASSOCIATED WITH THE USER.

8 **Q.** ALL RIGHT. AND WE HAVE ANOTHER EXCERPT FROM ADOBE'S
9 CORPORATE REPRESENTATIVE, MR. HERBACH. WHAT IS THE RELEVANCE
10 OF THIS?

11 **A.** SO THIS BASICALLY SHOWS THAT THE TOKEN THAT IS RECEIVED
12 HAS AN ENCRYPTED KEY, AND THAT KEY IS DECODED AND EXTRACTED
13 FROM THE -- FROM THE VOUCHER, AND THEN IS USED TO PRODUCE THE
14 ACCESS.

15 **Q.** OKAY, SIR. UNDERSTANDING THAT THESE ARE COMPLEX
16 FUNCTIONS, WHY DON'T YOU WALK US THROUGH AT A HIGH LEVEL WHAT
17 IS SHOWN HERE?

18 **A.** SO THE LAST STEP BASICALLY SAYS -- THIS IS STEP 4C AT THE
19 BOTTOM BOX THERE. AND THAT BASICALLY SHOWS THAT THE TOKEN MAY
20 BE FOUND BY A LATER EXECUTION OF THE ACCESS CHECKING PROCESS.

21 AND THIS IS IF THEY WERE IN THE SAME SECURITY SESSION AND
22 THEY TRIED TO OPEN THE DOCUMENT AGAIN, THEN THE VOUCHER WOULD
23 BE CACHED, AND THEY WOULDN'T HAVE TO MAKE AN EXTERNAL REQUEST.

24 **Q.** IS IT THE TOKEN OR THE PERMISSION THAT IS CHECKED?

25 **A.** SAY AGAIN? YES. IF THEY WERE TRYING TO ACCESS THE

1 DOCUMENT AGAIN, THEY COULD FIND THE VOUCHER IN THE STORED
2 CACHE.

3 Q. WHAT IS THE PERMISSION THAT YOU ARE SPECIFICALLY
4 IDENTIFYING IN CONNECTION WITH THE LIVECYCLE PRODUCT?

5 A. IT'S THE KEY WITHIN THE VOUCHER.

6 Q. OKAY.

7 AND YOU MAY HAVE COVERED THIS ALREADY, BUT CAN YOU REMIND
8 US WHAT YOU MEAN BY A "KEY"?

9 A. SO THE DOCUMENTS ARE ENCRYPTED. AND AS I MENTIONED
10 BEFORE, ENCRYPTED DOCUMENTS LOOK LIKE GIBBERISH. THE ONLY WAY
11 YOU CAN DECODE THEM IS WITH SOME INFORMATION THAT WOULD ENABLE
12 YOU TO DECODE IT. AND THAT INFORMATION IS A SECRET KEY THAT
13 ALLOWS YOU TO DECODE THE INFORMATION THAT IS ENCRYPTED.

14 Q. THANK YOU. ALL RIGHT. SO I THINK SLIDE 32 CONTINUES ON
15 FROM 31.

16 A. YES. SO THIS BASICALLY TALKS ABOUT HOW THE VOUCHER COULD
17 BE LOCALLY STORED. SO, THERE IS TWO SETTINGS. IN THE ONLINE
18 SETTING THE VOUCHER IS STORED IN THE SECURITY SESSION IN THE
19 CACHE.

20 IN THE OFFLINE SETTING IT IS ALSO STORED IN THE CACHE, BUT
21 IT CAN ALSO BE TOWARD IN THE DATABASE.

22 Q. I SEE. AND SO THE LAST TWO FUNCTIONS THERE, ONE REFERS TO
23 OFFLINE AND ONE REFERS TO ONLINE USE?

24 A. THAT'S RIGHT.

25 Q. OKAY, SIR. GIVEN THAT ANALYSIS, DO YOU HAVE AN OPINION AS

1 TO WHETHER OR NOT ADOBE LIVECYCLE PRODUCTS INFRINGE CLAIM 1 OF
2 THE '541 PATENT?

3 **A.** YES. I FOUND ALL FOUR LIMITATIONS INFRINGED.

4 **Q.** THANK YOU.

5 AND WHICH PARTY OR GROUP OF PEOPLE IS PERFORMING THESE
6 STEPS?

7 **A.** SO ANY COMMERCIAL OUTFIT THAT USES LIVECYCLE RIGHTS
8 MANAGEMENT PRODUCT WOULD INFRINGE.

9 **Q.** LET'S TURN TO CLAIM 2. CLAIM 2, I THINK -- WHY DON'T YOU
10 REMIND THE JURY WHAT THE SIGNIFICANCE IS OF CLAIM 2?

11 **A.** CLAIM TWO BASICALLY SAYS THAT THE NAMED STEPS REQUESTING
12 THE PERMISSION, RECEIVING THE TOKEN AND SELECTIVELY GRANTING
13 THE RESOURCE ACCESS ARE PERFORMED BY THE CLIENT.

14 **Q.** THANK YOU. AND IN THE PERFORMANCE OF YOUR ANALYSIS, DID
15 YOU ASCERTAIN IN YOUR OPINION WHETHER OR NOT CLAIM 2 IS
16 INFRINGED BY THE ADOBE LIVECYCLE PRODUCTS?

17 **A.** YES, IT IS.

18 **Q.** OKAY. START AT CLAIM 3, SIR.

19 **A.** OKAY.

20 **Q.** HERE THE PERMISSION COMPRISES A UNIQUE CODED KEY. I
21 BELIEVE YOUR TESTIMONY WAS THAT THERE WAS A KEY OF SOME KIND
22 THAT WAS THE PERMISSION?

23 **A.** THAT'S RIGHT.

24 **Q.** CAN YOU PROVIDE ANY FURTHER DETAIL ABOUT THE KEY THAT IS
25 USED IN LIVECYCLE?

1 **A.** THE KEY IS AN ENCRYPTION KEY THAT IS BASED ON SYMMETRIC
2 ENCRYPTION.

3 **Q.** THANK YOU. AND SO YOU BELIEVE THAT TO BE PRESENT, AS
4 WELL --

5 **A.** THAT'S RIGHT.

6 **Q.** -- BASED ON YOUR VIEW OF THE SOURCE CODE?

7 **A.** RIGHT.

8 **Q.** LET'S LOOK AT -- SORRY -- THIS TESTIMONY. WHAT IS THE
9 SIGNIFICANCE OF THIS TESTIMONY FROM ADOBE'S --

10 **A.** THIS IS JUST MORE CORROBORATING EVIDENCE FROM DEPOSITION
11 THAT WHERE ONE OF THE ADOBE REPRESENTATIVES IS ASKED:

12 "WHAT IS THE VOUCHER USED FOR?"

13 AND HE SAYS:

14 "THERE'S A DOCUMENT KEY WITHIN THE VOUCHER." THAT IS THE
15 SECOND ANSWER. I AM SORRY, THE FIRST ANSWER.

16 "THAT IS USED TO SYMMETRICALLY DECRYPT THE DOCUMENT."

17 AND HE SAYS FURTHERMORE:

18 "THE PERMISSIONS IN THE VOUCHER ARE USED TO INSTRUCT THE
19 CLIENT APPLICATION, FOR EXAMPLE, WHETHER TO ALLOW PRINTING OR
20 NOT."

21 **Q.** SO IN YOUR ASSESSMENT IS ADOBE'S CORPORATE
22 REPRESENTATIVE'S TESTIMONY THAT THE KEY WITHIN THE VOUCHER IS
23 A SYMMETRIC ENCRYPTION KEY, IS THAT CONSISTENT WITH YOUR
24 TESTIMONY?

25 **A.** THAT'S RIGHT.

1 **MS. MEHTA:** OBJECTION, YOUR HONOR. LEADING.

2 **MR. DINOVO:** I WILL REPHRASE, YOUR HONOR.

3 **BY MR. DINOVO:**

4 **Q.** UPON REVIEWING ADOBE'S CORPORATE REPRESENTATIVE'S
5 TESTIMONY, DO YOU BELIEVE IT TO BE CONSISTENT OR INCONSISTENT
6 WITH YOUR VIEW OF A PERMISSION?

7 **A.** IT IS CONSISTENT.

8 **Q.** ALL RIGHT, SIR. FINALLY, WITH RESPECT TO THIS PATENT AND
9 THIS FAMILY OF PRODUCTS, LET'S TURN TO CLAIM 13. WHAT DOES
10 CLAIM 13 ADD TO CLAIM 1?

11 **A.** SO, WHAT THIS MEANS IS THAT WHEN THE CLIENT REQUESTS AN
12 AUTHORIZATION, THAT EVENT SHOULD TRIGGER AN AUTHORIZATION
13 PROCEDURE WHICH DECIDES WHETHER OR NOT TO GRANT THE TOKEN.

14 **Q.** OKAY. AND IT SAYS THAT THIS OCCURS IN AN EXTERNAL SOURCE.
15 DOES THAT MEAN THAT IN YOUR ASSESSMENT THAT CLAIM 13 REQUIRES
16 SOME PARTY OTHER THAN THE CLIENT TO TAKE ACTION?

17 **A.** SO, IT JUST SIMPLY SEEMS TO MODIFY REQUESTING PERMISSION
18 IN A WAY THAT SAYS WHEN YOU REQUEST A PERMISSION FROM THE
19 CLIENT -- IN OTHER WORDS, WHEN THE CLIENT PERFORMS THAT
20 ACTION -- SOMETHING ELSE HAPPENS SOMEWHERE ELSE.

21 **Q.** THANK YOU.

22 ALL RIGHT. SO, WE ARE NEARING THE END OF THIS
23 PRESENTATION. WHY DON'T YOU TELL US WHAT THIS SLIDE DEPICTS?

24 **A.** SO, BASICALLY, THIS SAYS, YOU KNOW -- THIS JUST SORT OF
25 SUMMARIZES HOW LIVECYCLE RIGHTS MANAGEMENT DEALS WITH THE '541

1 PATENT THAT WE TALKED ABOUT EARLIER. SO, YOU KNOW, BASICALLY,
2 YOU KNOW, WE CHECK -- IN CLAIM 1, WE CHECK IN THE LOCAL
3 PERMISSION STORE. YOU KNOW, IF PERMISSION IS NOT AVAILABLE
4 LOCALLY, WE REQUEST IT FROM THE EXTERNAL SERVER. WE RECEIVE
5 THE TOKEN. AND BASED ON THE TOKEN WE GRANT THE PERMISSION.

6 Q. THANK YOU. FINALLY, THERE'S A DEPICTION HERE OF WHAT?

7 A. THIS BASICALLY IS JUST SHOWING THE LAST CLAIM, CLAIM
8 NUMBER 13, THAT REQUESTS FROM THE CLIENT, TRIGGERS SOME ACTION
9 AT THE SERVER.

10 Q. AND WHAT IS THAT ACTION?

11 A. SO ON THE SERVER SIDE THERE IS AN AUTHORIZATION PROCESS
12 WHICH DEPENDS UPON THE WAY THE SERVER IS SET UP THAT DECIDES
13 WHETHER OR NOT TO GRANT THE TOKEN.

14 Q. ALL RIGHT. AND DO YOU HAVE SOURCE CODE CITATIONS FOR THAT
15 ACTIVITY?

16 A. YES. THIS IS JUST SHOWING THAT ON THE CLIENT SIDE THERE
17 IS A REQUEST MADE TO THE SERVER THAT TRIGGERS AN
18 AUTHORIZATION.

19 Q. AND WHERE IS THE REQUEST SHOWN OR --

20 A. THE REQUEST IS SHOWN IN THE BOTTOM BOX ON THE RIGHT-HAND
21 SIDE ABOVE THE CLAIM 13. THIS VERY LONG METHOD:

22 "SOAP_CALL_IMPL_GETCONSUMELICENSE." IT SENDS A MESSAGE TO
23 THE SERVER.

24 Q. ALL RIGHT. YOU USED THE TERM "SOAP." WHAT IS THAT?

25 A. SIMPLE OBJECT ACCESS PROTOCOL. PROTOCOL FOR REQUESTING

1 ACTIONS ON THE WEB.

2 Q. THANK YOU. AND THE FINAL SLIDE OF THIS PRESENTATION,
3 SLIDE 41, WHAT IS SHOWN HERE, SIR?

4 A. CAN WE ADVANCE A BIT?

5 Q. YES.

6 A. SO WHAT I'M SHOWING HERE IS ACTUALLY SOME CODE ON THE
7 SERVER SIDE. YOU WILL NOTICE THAT IN THE TOP BOX IT IS:

8 "EDCSOAP.CPP." THAT IS A C PLUS PLUS PROGRAM FILE. THAT
9 IS ON THE CLIENT SIDE, AND IT CALLS THE SERVER.

10 NOW, YOU KNOW, THIS IS -- TRANSFERS ESSENTIALLY THE
11 REQUEST PROCESSING TO THE SERVER SIDE. AND WHAT WE ARE
12 SHOWING ON THE BOTTOM THREE BOXES ON THE LEFT-HAND SIDE IS
13 JAVA CODE WHERE THE PROCESSING HAPPENS ON THE SERVER SIDE.

14 AND THESE ARE BASICALLY THE "BUSINESSHANDLER.JAVA" AND SO
15 ON, ARE THE BUSINESS RULES THAT GET APPLIED ON THE SERVER
16 SIDE.

17 Q. ALL RIGHT.

18 A. AND THEN, FINALLY, I'M SORRY. I SHOULD ADD THAT THE
19 VOUCHER GETS CREATED AT THE BOTTOM, AT THE BOTTOM CODE, AND IT
20 GETS SENT BACK.

21 Q. ALL RIGHT. THANK YOU.

22 SO YOUR OPINION RELATIVE TO CLAIM 13 OF THE '541 AND THE
23 LIVECYCLE PRODUCTS IS WHAT?

24 A. CLAIM 13 IS SATISFIED.

25 Q. COULD YOU REFER, SIR, TO PLAINTIFF'S EXHIBIT 52 IN YOUR

1 BINDER?

2 **A.** I AM SORRY. I FORGOT TO BRING MY READING GLASSES. DO YOU
3 MIND IF I GET THEM?

4 **MR. DINOVO:** YOUR HONOR, DO YOU MIND IF HE RUNS AND
5 GET HIS GLASSES?

6 **THE COURT:** NO, I DON'T MIND.

7 **THE WITNESS:** MAY I?

8 **THE COURT:** YES, YOU MAY.

9 (PAUSE IN THE PROCEEDINGS.)

10 **MR. DINOVO:** MS. MASON, IF YOU CAN HIGHLIGHT THE
11 BOTTOM OF THE FIRST PAGE WITH A TITLE.

12 (PUBLISHED TO JURY.)

13 **BY MR. DINOVO**

14 **Q.** I THINK I NEED GLASSES, TOO, DR. DEVANBU. I'M HAVING
15 TROUBLE SEEING IT. DO YOU SEE THE TITLE HERE INDICATED IN
16 PLAINTIFF'S EXHIBIT 52?

17 **A.** YES.

18 **Q.** WHAT IS IT?

19 **A.** DOCUMENT ACCESS CONTROL AND AUDITING.

20 **Q.** AND IS IT YOUR OPINION THAT LIFECYCLE WRITES MANAGEMENT
21 PROVIDES ACCESS CONTROL?

22 **A.** YES, IT DOES.

23 **Q.** DO YOU HAVE AN UNDERSTAND ABOUT -- CAN YOU TURN TO THE
24 SECOND SENTENCE THERE? DO YOU SEE THAT THERE IS A REFERENCE
25 TO MONITORING AND TRACKING?

1 **A.** YES. YOU CAN MONITOR THE DOCUMENT, MAKE CHANGES TO THE
2 POLICY, PREVENT USERS FROM CONTINUING TO ACCESS THE DOCUMENT.

3 AND THEN, THE NEXT PARAGRAPH IT SAYS:

4 "YOU CAN MONITOR POLICY-PROTECTED DOCUMENTS AND EVENTS."

5 **Q.** WHAT IS MEANT BY "TRACKING EVENTS" THERE?

6 **A.** TRACKING EVENTS BASICALLY APPLIES TO DOCUMENTS THAT YOU
7 CONSIDER SO VALUABLE THAT YOU WOULD LIKE TO KNOW WHEN AND WHO
8 IS ACCESSING IT.

9 **Q.** ALL RIGHT. THANK YOU.

10 SO LET'S TURN TO PRESENTATION FIVE, WHICH IS THE SAME SET
11 OF PRODUCTS, BUT THE '670. AND I'M HOPEFUL THAT WE CAN BE A
12 LITTLE QUICKER SINCE WE HAVE HAD A DISCUSSION ABOUT LIVECYCLE.

13 (DEMONSTRATIVE DISPLAYED ON EASEL).

14 **BY MR. DINOVO:**

15 **Q.** ALL RIGHT. DR. DEVANBU, I'M NOT SURE YOU CAN SEE THE
16 BOARD. IT IS A LITTLE -- IT IS AT A STRANGE ANGLE. BUT CAN
17 YOU READ THE PREAMBLE ALOUD?

18 **A.** "A METHOD OF TRACKING ACCESS TO ELECTRONIC CONTENT, THE
19 METHOD COMPRISING."

20 **Q.** THANK YOU, SIR. SO, DO YOU UNDERSTAND LIVECYCLE RIGHTS
21 MANAGEMENT PRODUCTS TO BE ADAPTED TO TRACK ACCESS TO
22 ELECTRONIC CONTENT?

23 **A.** THAT'S CORRECT.

24 **Q.** WHAT IS THE ELECTRONIC CONTENT IN THE CONTEXT OF
25 LIVECYCLE?

1 **A.** IT'S MOSTLY DOCUMENTS, BUT A VARIETY OF DIFFERENT KINDS OF
2 DOCUMENTS ARE SUPPORTED.

3 **Q.** THANK YOU. OKAY, SIR. IF WE CAN WALK THROUGH WHAT THIS
4 ANIMATION SHOWS.

5 **A.** SO WE SAW THIS BEFORE. IT'S BASICALLY SOMEBODY WHO
6 CREATED AN IMPORTANT DOCUMENT, AND THEY WANT TO MAKE SURE THAT
7 THE WRONG PEOPLE DON'T READ IT.

8 SO SOME POLICY PROTECTION IS ADDED TO THE DOCUMENT FILE,
9 AND IT'S CHECKED WHEN IT'S OPENED. AND WE SAW THIS BEFORE, AS
10 WELL.

11 SO ONCE PROTECTION IS ADDED TO THE DOCUMENT IT COULD BE
12 FREELY DISTRIBUTED. AND THE DOCUMENT CREATOR COULD HAVE THE
13 CONFIDENCE THAT ACCESS TO IT IS ALWAYS TRACKED. SO --

14 **Q.** YES. PLEASE CONTINUE. SO ON THIS NEXT LINE.

15 **A.** SO IF SOMEBODY WERE TO TRY TO OPEN IT, THEN THERE WOULD BE
16 AN ATTEMPT TO TRANSMIT SOME CREDENTIAL INFORMATION ABOUT THE
17 USER AND THE DOCUMENT TO THE SERVER. AND IF THAT TRANSMISSION
18 IS SUCCESSFULLY CONCLUDED, THEN -- WE CAN KEEP GOING, I THINK,
19 WITH THE ANIMATION -- THEN IF ACCESS WOULD BE GRANTED. BUT IF
20 NOT, THEN THE OPEN ACCESS ATTEMPT WOULD FAIL IF ANY PART OF
21 THE SERVER COMMUNICATION FAILS.

22 **Q.** OKAY. AND I THINK WE HAVE TALKED ABOUT SOME OF THESE
23 REASONS FOR DOING IT. LET'S MOVE ON TO THE ACTUAL CLAIM
24 LANGUAGE. SO LOOKING AT THE PREAMBLE THAT RELATES TO TRACKING
25 ACCESS, WHAT ABOUT THIS ADOBE DOCUMENT INDICATES THAT

1 FUNCTIONALITY TO YOU?

2 **A.** SO THIS IS ESSENTIALLY AN EXPLANATION OF HOW THE ADOBE
3 LIVECYCLE PRODUCT WORKS. WE CAN PROBABLY STEP THROUGH THE
4 ANIMATION HERE.

5 SO IT SHOWS HOW SOMEBODY CAN CREATE THE DOCUMENTS, AND
6 THEN THEY COULD -- SECOND STEP -- ADD POLICY PROTECTIONS TO
7 THE DOCUMENT, AS WE SAW BEFORE. AND THEN, WHEN SOMEBODY TRIED
8 TO VIEW THE DOCUMENT, ONCE IT HAS BEEN DISTRIBUTED, THE --
9 WHEN THEY TRY TO VIEW IT WE WOULD AUTHORIZE AND PERMIT ACCESS
10 TO THE DOCUMENT.

11 **Q.** THIS IS ANOTHER DIAGRAM FROM ADOBE'S DOCUMENTATION. WHAT
12 DOES THIS SHOW?

13 **A.** IT SHOWS HOW THIS WORKS WITH A SORT OF NICE ANIMATION AND
14 PICTURE. SO, YOU KNOW, BASICALLY THE FOUR STEPS THAT WE JUST
15 TALKED ABOUT EARLIER.

16 THE FIRST TWO STEPS BEING YOU CREATE A DOCUMENT AND YOU
17 APPLY POLICIES TO THE DOCUMENT.

18 **Q.** OKAY. AND THE THIRD STEP?

19 **A.** THERE IS SOMEBODY TRYING TO VIEW THE DOCUMENT, AND WHEN
20 THE DOCUMENT IS VIEWED YOU CAN TRACK THE USAGE OF THE
21 DOCUMENTS.

22 **Q.** IS THIS -- DO THESE STEPS CORRESPOND TO THE STEPS IN THE
23 DIAGRAM ON THE PRECEDING PAGE?

24 **A.** YES, THIS IS -- THIS IS FROM AN ADOBE DOCUMENT.

25 **Q.** IF YOU COULD LOOK AT NUMBER FOUR, I DON'T KNOW IF YOU CAN

1 READ THAT.

2 **A.** THE DOCUMENT OWNER POLICY SET COORDINATOR OR ADMINISTRATOR
3 CAN TRACK DOCUMENTS AND MODIFY ACCESS TO THEM BY USING THE WEB
4 PAGES. DEVELOPERS CAN ALSO TRACK DOCUMENTS --

5 **Q.** THAT'S --

6 **A.** SORRY.

7 **Q.** THAT'S SUFFICIENT. I JUST WANTED TO STOP YOU THERE,
8 DR. DEVANBU.

9 SO, BASED ON THAT, DO YOU HAVE AN UNDERSTANDING AS TO WHAT
10 ADOBE MEANS BY "TRACKING"?

11 **A.** YES. IT'S TRACKING THE DOCUMENT THAT'S BEING VIEWED, WHEN
12 IT IS BEING VIEWED, AND WHO IS BEING VIEWED, DEPENDING ON THE
13 POLICY.

14 **Q.** ALL RIGHT. LET'S TURN TO THE CLAIM LANGUAGE OF THE '670
15 PATENT, CLAIM 45. AND WE'LL ADDRESS FOR EFFICIENCY SAKE BOTH
16 THE FIRST AND THIRD ELEMENT, ALL RIGHT?

17 **A.** RIGHT.

18 **Q.** WHAT IS SHOWN ON THIS SLIDE?

19 **A.** RIGHT. SO IT'S BASICALLY SHOWING IN THIS PICTURE FROM ONE
20 OF ADOBE'S DOCUMENTATION HOW WE CREATE THE FILE AND THEN HOW
21 WE TRANSMIT IT.

22 AND I THINK THERE IS SOME ANIMATION HERE. THAT SHOWS THAT
23 YOU CAN TRANSMIT FILES ON THE WEB, EMAIL, ANY WAY YOU LIKE.

24 **MR. DINOVO:** OKAY. AND, FOR THE RECORD, THAT IS
25 PLAINTIFF'S EXHIBIT 52.

1 **THE WITNESS:** RIGHT.

2 **BY MR. DINOVO:**

3 **Q.** HOW ABOUT THIS NEXT SLIDE?

4 **A.** IT'S SHOWING THE SAME THING. THE DOCUMENT CAN BE CREATED,
5 AND THEN YOU CAN APPLY A SECURITY POLICY AND DISTRIBUTE THE
6 DOCUMENT USING WEB PAGES, FOR EXAMPLE. AND ALSO THEY MENTION
7 YOU CAN DISTRIBUTE IT BY EMAIL THROUGH A NETWORK FOLDER OR ON
8 A WEBSITE.

9 **Q.** WHICH ELEMENT IS THE DISTRIBUTION RELATED TO?

10 **A.** THAT'S RELATED TO TRANSMITTING THE FILE TO AT LEAST ONE
11 ADDRESS.

12 **Q.** ALL RIGHT, SIR. LET'S TURN TO CLAIM 45 OF THE '670, THE
13 SECOND ELEMENT.

14 **A.** OKAY.

15 **Q.** SO WHAT DO WE HAVE HERE ON SLIDE 17?

16 **A.** THE SECOND ELEMENT REQUIRES THAT ACCESS TO THE ELECTRONIC
17 CONTENT IS DENIED. SO THE DOCUMENT IN THIS CASE IS ENCRYPTED,
18 SO ACCESS TO THIS DOCUMENT REQUIRES A KEY. IF YOU DON'T HAVE
19 A KEY, THEN ESSENTIALLY ACCESS IS DENIED.

20 SO THIS PARAGRAPH ESSENTIALLY STATES THAT THE SYMMETRIC
21 CRYPTOGRAPHIC SYSTEM IS USED FOR ENCRYPTION AND DECRYPTION.
22 THAT IS WHAT THAT MEANS.

23 AND SO SINCE WE ENCRYPT THE POLICIES AND THE DOCUMENTS WE
24 CAN'T DECRYPT IT, SO WE DON'T HAVE ACCESS TO IT. IF YOU JUST
25 GOT A DOCUMENT BY EMAIL, IF YOU JUST GOT THIS DOCUMENT BY

1 EMAIL YOU CAN'T VIEW IT. YOU CAN'T HAVE ACCESS TO IT WITHOUT
2 THE KEY.

3 Q. WHERE IS THE KEY LOCATED?

4 A. THE KEY IS IN A VOUCHER.

5 Q. ALL RIGHT. WHAT WAS SIGNIFICANT TO YOU, DR. DEVANBU,
6 ABOUT THIS TESTIMONY FROM ADOBE'S CORPORATE REPRESENTATIVE?

7 A. THAT IS THE KEY THAT YOU NEED TO VIEW THE DOCUMENT IS IN A
8 VOUCHER. AND IN ORDER TO GET THAT DOCUMENT'S PERMISSION, THE
9 PERMISSION TO VIEW IT, YOU NEED TO GET THE VOUCHER.

10 Q. ALL RIGHT. LET'S TURN TO THE SECOND COMPONENT OF THE
11 SECOND STEP, 2B.

12 A. RIGHT. SO, 2A AND 2B ARE ESSENTIALLY SAYING THAT UNLESS
13 NOTIFICATION INFORMATION IS COLLECTED AND SENT, UNTIL IT IS
14 SENT, ACCESS IS DENIED.

15 Q. AND --

16 A. I AM SORRY.

17 Q. IS THAT THE CASE WITH THE LIVECYCLE PRODUCTS?

18 A. YES, IT IS.

19 Q. IS THAT DEPICTED HERE IN YOUR FLOW CHART?

20 A. THAT'S RIGHT. SO THE NOTIFICATION INFORMATION IS WITHIN,
21 FOR EXAMPLE, THE ADOBE PRODUCT FAMILY. IT WILL COLLECT AND
22 TRANSMIT THE INFORMATION. AND THEN, IF IT IS SUCCESSFULLY
23 RECEIVED -- IF IT IS SUCCESSFULLY TRANSMITTED, THEN ACCESS IS
24 GIVEN. IF THE NOTIFICATION INFORMATION COULD NOT BE -- COULD
25 NOT BE TRANSMITTED, THEN WE DON'T GRANT ACCESS.

1 Q. WHAT DO YOU MEAN BY "NOTIFICATION INFORMATION"?

2 A. HERE IT DEPENDS ON THE POLICY. BUT USUALLY THERE IS AT
3 LEAST A DOCUMENT I.D. AND THE USER I.D. IN SOME CASES WOULD BE
4 TRANSMITTED.

5 Q. OKAY. LET'S LOOK UNDER THE HOOD A LITTLE BIT. WHAT IS
6 SHOWN HERE?

7 A. SO WE'RE LOOKING AT THE SOURCE CODE HERE. WE HAVE SEEN
8 THIS BEFORE, SO IT REALLY IS THE SAME SOURCE CODE. AND WHAT
9 WE ARE SHOWING HERE IS THAT IF THE SOAP CALL FAILS, THAT IS
10 THE TRANSMISSION FAILED, THEN THERE'S A METHOD CALL THAT
11 PROCESSES THE FAILURE AND DIAGNOSES THE FAILURE.

12 AND IF THE TRANSMISSION FAILED, THE INITIALIZATION FAILS.
13 AND THEN, ACCESS TO THE DOCUMENT IS NOT GRANTED.

14 Q. ALL RIGHT, DR. DEVANBU. LET'S TURN TO THE FINAL ELEMENT
15 HERE.

16 A. OKAY.

17 Q. WHAT DO YOU UNDERSTAND TO BE A SUCCESSIVE RECIPIENT?

18 A. A SUCCESSIVE RECIPIENT HERE IS SOMEBODY WHO GETS THE
19 DOCUMENT FROM A PREVIOUS USER.

20 SO, YOU KNOW, THIS IS A TRACE FROM A DEPOSITION. SHOULD I
21 GO AHEAD?

22 Q. I AM SORRY. WHAT IS MR. HERBACH, ADOBE'S CORPORATE
23 REPRESENTATIVE -- WHAT DOES HIS TESTIMONY INDICATE TO YOU?

24 A. SO, BASICALLY, IN THIS -- IN THIS DISCUSSION, MR. HERBACH
25 WAS ASKED, YOU KNOW, FOR EXAMPLE, IF SOMEONE PASSES THE

1 DOCUMENT TO ANOTHER PERSON. SO THAT'S THE FIRST QUESTION ON
2 THE TOP.

3 IT SAYS THE SECOND SENTENCE:

4 "IF THE DOCUMENT IS PASSED FROM POSITION TO POSITION FIVE,
5 WOULD THE PERSON IN POSITION FIVE BE AUTHORIZED TO ACCESS THE
6 DOCUMENT?"

7 THEN, THERE IS SOME CONFUSION ABOUT THE QUESTION. AND
8 THEN, FINALLY, HE SAYS:

9 "WHENEVER ANYBODY OPENS THE DOCUMENT, ESSENTIALLY
10 REGARDLESS OF HOW THEY GOT IT, THE APPLICATION LIKE READER 11
11 WILL ATTEMPT TO COMMUNICATE WITH THE LIVECYCLE RIGHTS
12 MANAGEMENT SERVER."

13 **Q.** OKAY. SO GIVEN THAT ANALYSIS OF THE DOCUMENTATION AND
14 SOURCE CODE, WHAT IS YOUR OPINION RELATIVE TO CLAIM 45 OF THE
15 '670 PATENT AND WHETHER OR NOT IT IS INFRINGED BY THE
16 LIVECYCLE PRODUCTS?

17 **A.** IT IS INFRINGED BY THE LIVECYCLE PRODUCTS.

18 **Q.** AND WHO IS PARTY OR ACTOR THAT IS PERFORMING THE STEPS OF
19 CLAIM 45?

20 **A.** IN THIS CASE IT WOULD BE ANYBODY OPERATING THE LIVECYCLE
21 RIGHTS MANAGEMENT SOFTWARE.

22 **Q.** THANK YOU. LET'S TURN TO CLAIM 52. AND THIS WILL
23 CONCLUDE THIS PRESENTATION.

24 WHAT DOES CLAIM 52 ADD?

25 **A.** SO IT'S BASICALLY AT THE BOTTOM OF THE WHITE BOARD. AND

1 ON THE SLIDE IT BASICALLY SAYS THAT JUST LIKE 45, THE
2 VARIATION BEING THAT CREATING THE FILE INCLUDES ENCRYPTING THE
3 ELECTRONIC CONTENT.

4 Q. ALL RIGHT. DOES, IN FACT, LIVECYCLE ENCRYPT THE CONTENT?

5 A. YES. THIS IS A DOCUMENT FROM -- EXTRACT OF A DOCUMENT
6 FROM ADOBE THAT -- I BELIEVE IT'S EXHIBIT 56 -- THAT DESCRIBES
7 THE ENCRYPTION PROCESS.

8 Q. ALL RIGHT. AND JUST -- COULD YOU JUST AT A HIGH LEVEL
9 DESCRIBE THE TYPE OF ENCRYPTION THAT IS USED IN LIVECYCLE?

10 A. AS IT SAYS HERE, IT SAYS:

11 "SYMMETRIC CRYPTOGRAPHIC KEY SYSTEM."

12 Q. AND WHAT IS "SYMMETRIC ENCRYPTION," SIR?

13 A. SO WHEN YOU ENCRYPT A DOCUMENT SOMETIMES YOU USE THE SAME
14 KEY FOR ENCRYPTION AND DECRYPTION. IN THAT SETTING IT IS
15 CALLED A "SYMMETRIC KEY ENCRYPTION."

16 Q. ALL RIGHT. AND FINAL SLIDE ON THIS PRESENTATION, AGAIN
17 FROM MR. HERBACH, WHAT ENCRYPTION SCHEME DOES HE IDENTIFY?

18 A. SO HE IDENTIFIES THE AES STANDARD TO ENCRYPT THE
19 DOCUMENTS.

20 Q. GIVEN YOUR ANALYSIS OF THE SOURCE CODE AND ADOBE
21 DOCUMENTATION AND THE STATEMENTS OF ADOBE'S CORPORATE
22 REPRESENTATIVES, WHAT IS YOUR CONCLUSION RELATIVE TO CLAIM 52
23 OF THE '670 PATENT AND WHETHER OR NOT IT IS INFRINGED BY ADOBE
24 LIVECYCLE?

25 A. IT IS INFRINGED.

1 Q. THANK YOU.

2 ALL RIGHT, DR. DEVANBU. WE ARE JUST GOING TO COVER NOW
3 THE LAST PRODUCT THAT DIGITAL REG HAS ACCUSED OF INFRINGEMENT,
4 THE FLASH ACCESS, ALL RIGHT? WHAT IS ADOBE FLASH?

5 A. FLASH IS A PLATFORM FOR DELIVERING VIDEO CONTENT.

6 Q. ALL RIGHT. CAN YOU GIVE ME AN EXAMPLE OF WHERE SOMEONE
7 MIGHT ENCOUNTER FLASH ON A DAY-TO-DAY BASIS?

8 A. IF YOU USE VODOO YOU WOULD CERTAINLY BE USING FLASH.

9 Q. WHAT IS VODOO?

10 A. VODOO IS A VIDEO PLAYER. YOU CAN FIND IT ON MANY
11 PLATFORMS WHERE YOU CAN PLAY VIDEO CONTENT: MOVIES,
12 TELEVISION SHOWS.

13 Q. SO YOU CAN WATCH MOVIES THROUGH VODOO?

14 A. YES.

15 Q. ALL RIGHT. HOW ABOUT FLASH ACCESS? HOW DOES THAT DIFFER
16 FROM FLASH?

17 A. FLASH ACCESS IS THE DIGITAL RIGHTS MANAGEMENT FEATURE OF
18 FLASH. SO, IF -- YOU KNOW, IF YOU MAKE MOVIES OF CATS IN YOUR
19 HOUSE, YOU MAY NOT CARE ABOUT PROTECTING THEM.

20 BUT IF YOU MAKE SOMETHING VERY VALUABLE OR SOMETHING YOU
21 WISH TO RESTRICT ACCESS TO, YOU KNOW, THEN YOU MAY USE FLASH
22 ACCESS TO PROTECT THE CONTENT.

23 Q. I SEE.

24 SO DO THESE COMPONENTS OF FLASH WORK COOPERATIVELY?

25 A. YES.

1 Q. DO YOU KNOW HOW ONE WOULD WATCH A FLASH VIDEO? WHAT WOULD
2 THEY NEED AT HIS OR HER MACHINE OR DEVICE?

3 A. SO THERE'S A VARIETY OF WAYS IT COULD BE USED. BUT,
4 ESSENTIALLY, YOU WOULD HAVE TO HAVE AN APPLICATION THAT
5 ENABLES THE FLASH LIBRARIES, INCLUDING THE FLASH ACCESS
6 LIBRARIES. SO IF YOUR APPLICATION THAT VIEWS VIDEOS IS
7 INTENDED TO ALSO VIEW PROTECTED CONTENT, THEN YOU WOULD HAVE
8 AN APPLICATION THAT INCORPORATED FLASH ACCESS AND FLASH.

9 Q. SIR, CAN YOU PLEASE TURN TO PLAINTIFF'S EXHIBIT 65 IN YOUR
10 BINDER?

11 A. OKAY.

12 Q. ARE YOU THERE, SIR?

13 A. YES.

14 Q. CAN YOU PLEASE READ THE TITLE ALOUD?

15 (DISPLAYED TO JURY.)

16 A. THE TITLE IS: "PROTECTING CONTENT ADOBE FLASH ACCESS.

17 Q. IS THIS A DOCUMENT YOU REVIEWED IN CONNECTION WITH FORMING
18 YOUR OPINIONS?

19 A. YES.

20 Q. DOES IT APPEAR TO BE A TRUE AND CORRECT COPY OF THAT
21 DOCUMENT?

22 A. YES.

23 MR. DINOVO: PLAINTIFF OFFERS PLAINTIFF'S EXHIBIT 65
24 INTO EVIDENCE.

25 MS. MEHTA: NO OBJECTION.

1 **THE COURT:** RECEIVED.

2 (PLAINTIFF'S EXHIBIT 65 WAS RECEIVED IN EVIDENCE.)

3 **BY MR. DINOVO:**

4 **Q.** NOW, SIR, I WOULD LIKE YOU TO TURN TO PLAINTIFF'S EXHIBIT
5 67.

6 **A.** I'M THERE.

7 **Q.** ALL RIGHT. AND YOU MIGHT JUST CHECK FOR THE RECORD IT
8 APPEARS TO BE THE SAME AS PLAINTIFF'S EXHIBIT 66. I THINK IT
9 IS JUST A CLEANER COPY.

10 **A.** YES. IT'S THE SAME DOCUMENT WITH THE SAME DATE.

11 **Q.** OKAY.

12 **THE COURT:** WE CAN'T HAVE BOTH.

13 **MR. DINOVO:** NO.

14 **THE COURT:** SO WE WILL STRIKE 66 AND USE 67?

15 **MR. DINOVO:** YES, YOUR HONOR. I JUST WANTED TO MAKE
16 CLEAR THAT IT WAS THE SAME DOCUMENT HE REFERENCED IN HIS
17 REPORT.

18 **BY MR. DINOVO**

19 **Q.** SO, FOR THE RECORD, EXHIBIT 66 BEARS THE BATES RANGE
20 ADOBE-DR280, RIGHT?

21 **A.** 66?

22 **Q.** YES, SIR.

23 **A.** YES. IT STARTS AT 280.

24 **Q.** THANK YOU. ALL RIGHT. SO LET'S TALK ABOUT 67, SINCE IT
25 IS A MORE LEGIBLE COPY.

1 WHAT IS THE TITLE OF THAT DOCUMENT?

2 A. IT'S "ADOBE FLASH ACCESS OVERVIEW."

3 Q. IS THERE A VERSION ASSOCIATED WITH IT?

4 A. VERSION 3.0 DATED AUGUST 2011.

5 Q. THANK YOU, SIR. IS THIS DOCUMENT -- OBVIOUSLY, THE BATES
6 NUMBERS AREN'T ON IT, BUT IS THIS DOCUMENT ONE THAT YOU RELIED
7 UPON IN FORMING YOUR OPINIONS?

8 A. YES, I DID.

9 Q. DOES IT APPEAR TO BE A TRUE AND CORRECT COPY OF THAT
10 DOCUMENT?

11 A. YES.

12 MR. DINOVO: PLAINTIFF OFFERS PLAINTIFF'S EXHIBIT 67
13 INTO EVIDENCE.

14 MS. MEHTA: NO OBJECTION.

15 THE COURT: RECEIVED.

16 MR. DINOVO: THANK YOU.

17 (PLAINTIFF'S EXHIBIT 67 WAS RECEIVED IN EVIDENCE.)

18 BY MR. DINOVO:

19 Q. FINALLY, LAST HOUSEKEEPING MATTER ON EXHIBITS. COULD YOU
20 TURN TO YOUR SOURCE CODE BINDER AND REFER TO TAB 175A?

21 A. I'M THERE.

22 Q. COULD YOU JUST TAKE A LOOK AT IT AND SEE IF IT APPEARS TO
23 BE THE SOURCE CODE OR COLLECTION OF SOURCE CODE THAT YOU
24 RELIED ON IN FORMING YOUR OPINION WITH RESPECT TO FLASH?

25 A. YEAH. THERE ARE SEVERAL HUNDRED PAGES, BUT IT SEEMS OKAY.

1 Q. OKAY.

2 MR. DINOVO: AND THE COURT, I UNDERSTAND, IS TAKING
3 THIS UNDER ADVISEMENT. SUBJECT TO THAT WE OFFER PLAINTIFF'S
4 EXHIBIT 175A INTO EVIDENCE.

5 THE COURT: WE WILL CONSIDER THAT UNDER SUBMISSION.

6 MR. DINOVO: THANK YOU, YOUR HONOR.

7 BY MR. DINOVO:

8 Q. OKAY.

9 MR. DINOVO: SO THE LAST PRESENTATION WOULD BE,
10 MS. MASON, PLEASE, PRESENTATION SIX.

11 (PUBLISHED TO JURY.)

12 BY MR. DINOVO

13 Q. ALL RIGHT. WE HAVE GONE THROUGH THESE CLAIMS A NUMBER OF
14 TIMES, SO WE WILL SEE IF WE CAN EXPEDITE THINGS HERE. BUT I
15 THINK THE JURY MIGHT FIND IT HELPFUL FOR YOU TO EXPLAIN THE
16 NOTION OF FLASH A LITTLE BIT BETTER.

17 A. YES. SO FLASH IS INTENDED TO PROVIDE DIGITAL RIGHTS
18 MANAGEMENT ON VIDEO CONTENT. SO WE ARE JUST SHOWING HERE THAT
19 IF SOMEBODY MADE A LOT OF VALUABLE VIDEO CONTENT THEY MIGHT BE
20 CONCERNED THAT SOMEBODY ELSE MIGHT COPY AND USE IT WITHOUT
21 PAYING FOR IT.

22 SO THEY HAVE A GOAL TO PREVENT ILLEGITIMATE USE OF THESE
23 VIDEOS. SO FOR THAT THEY CAN USE FLASH ACCESS.

24 Q. OKAY, SIR.

25 AND WALK THROUGH THESE SLIDES, BUT THE BASIC PREMISE IS

1 THIS PROVIDER OF VIDEO CONTENT MAY WANT TO PROTECT IT WITH
2 DRM?

3 **A.** RIGHT. THE REGIME IS THE SAME. YOU PROTECT IT, AND THEN
4 LICENSING AND ACTIVATION HAPPENS BEFORE YOU CAN VIEW IT.

5 **Q.** OKAY. SO, WHAT IS SHOWN HERE ON SLIDE FIVE?

6 **A.** SO WHAT IS SHOWN HERE IS BASICALLY THE USER IS TRYING TO
7 VIEW THE VIDEO CONTENT. AND WHEN THEY TRY TO VIEW IT, THEY
8 SEND SOME CREDENTIALS TO THE -- TO THE PLAYER -- TO THE
9 SERVER, AND THE SERVER RESPONDS WITH A LICENSE. AND THAT
10 LICENSE IS CHECKED, AND AT THE CLIENT SIDE, AND VALIDATED.
11 AND IF IT IS VALID, THEN ACCESS IS GRANTED, AND THEY CAN VIEW
12 THE VIDEO CONTENT.

13 **Q.** OKAY. AND IF THE TOKEN IS NOT RECEIVED?

14 **A.** IF THE TOKEN IS NOT RECEIVED, THEN THERE IS NO ACCESS
15 GRANTED.

16 THIS JUST SUMMARIZES THE FUNCTIONING.

17 **Q.** THANK YOU. LET'S TURN TO THE PREAMBLE OF CLAIM 1, AND THE
18 FIRST ELEMENT.

19 **A.** YES. IT SAYS:

20 "METHOD OF REGULATING ACCESS TO DIGITAL CONTENT."

21 **Q.** ALL RIGHT. AND SO THERE'S AN EXCERPT FROM THE JONES
22 DEPOSITION WHICH THE JURY HEARD FROM YESTERDAY. BUT WHAT IS
23 SIGNIFICANT HERE IN THIS TESTIMONY?

24 **A.** SO, BASICALLY, THIS IS CONFIRMING THE PREAMBLE TO THE
25 PATENT, A METHOD FOR REGULATING ACCESS TO DIGITAL CONTENT.

1 AND MR. JONES' ANSWER, ESPECIALLY THE SECOND ANSWER, SAYS
2 BASICALLY THAT, YOU KNOW, IT'S -- FLASH IS A DIGITAL RIGHTS
3 MANAGEMENT PLATFORM. AND DIGITAL RIGHTS MANAGEMENT PLATFORM
4 IS THE ABILITY TO SPECIFY USAGE RIGHTS UNDER WHICH CONTENT
5 COULD BE DECRYPTED AND PLAYED, THUS REGULATING ACCESS.

6 **Q.** OKAY. AND THIS IS PROBABLY A BIT DIFFICULT TO READ, BUT
7 IF WE LOOK AT THE FIRST ELEMENT OF THE '541 PATENT RELATIVE TO
8 FLASH, WHAT ABOUT MR. JONES' TESTIMONY IS RELEVANT TO THE
9 CHECKING PROCEDURE?

10 **A.** SO IT IS PROBABLY HELPFUL TO JUST FOCUS ON THE LAST BIT.
11 SO MR. JONES IS REFERRING TO:

12 "A SPECIFIC COMPONENT," IF I CAN READ IT, "OF THE AIR
13 RUNTIME OR THE FLASH PLAYER, IN THIS CASE ADOBECF," WHICH
14 STANDS FOR ADOBE CONTENT PROTECTION.

15 AND THIS MODULE, HE SAYS:

16 "WOULD CHECK, IF INSTRUCTED TO -- TO CHECK IF THERE IS A
17 LICENSE IN THE CACHE. IF SUCH A LICENSE EXISTS AND IT'S
18 VALID, THEN IT WOULD NOT NEED TO REACQUIRE A LICENSE."

19 **Q.** I AM SORRY. MAYBE IF YOU CAN SLOW DOWN A LITTLE BIT AND
20 WALK THROUGH THAT ONE MORE TIME, BECAUSE I THINK THAT IS
21 IMPORTANT.

22 **A.** SURE. MR. JONES IS REFERRING TO THE AIR RUNTIME, A-I-R
23 RUNTIME, IN THE LAST SENTENCE ON THE EXCERPT FROM HIS
24 DEPOSITION.

25 AND HE SAYS:

1 "A SPECIFIC COMPONENT OF AIR RUNTIME OR THE FLASH PLAYER,
2 IN THIS CASE ADOBECP," WHICH IS THE ADOBE CONTENT PROTECTION,
3 "WHICH IS THE MODULE," HE SAYS, "THAT ACTUALLY PERFORMS THAT
4 FUNCTION, WOULD CHECK, IF INSTRUCTED TO -- TO SEE IF THERE'S A
5 LICENSE IN THE CACHE. IF SUCH A LICENSE EXISTS AND IT IS
6 VALID, THEN IT WOULD NOT NEED TO REACQUIRE."

7 THAT IS WHAT HE SAYS.

8 **Q.** WHAT DO YOU UNDERSTAND BY MR. JONES' TESTIMONY WITH
9 RESPECT TO "REACQUIRE"?

10 **A.** SO BASICALLY HE IS SAYING THAT IF THE PRE-EXISTING LICENSE
11 IS NOT VALID, THE PRE-EXISTING PERMISSION IS NOT VALID, THEY
12 WOULD HAVE TO REACQUIRE IT.

13 **Q.** OKAY. SO WE MAY BE JUMPING AHEAD A LITTLE BIT, BUT SO
14 THIS FIRST ELEMENT, THEN, IS CHECKING TO SEE IF THERE IS A
15 PRE-EXISTING PERMISSION, YOU UNDERSTAND MR. JONES' TESTIMONY
16 TO CORROBORATE THAT?

17 **A.** THAT'S CORRECT.

18 **Q.** LET'S LOOK AT THE SOURCE CODE CITATIONS YOU'VE COLLECTED.
19 AND AT A VERY HIGH LEVEL, CAN YOU WALK US THROUGH WHAT IS
20 GOING ON HERE?

21 **A.** YES. SO THE ADOBE CONTENT PROTECTION IS A COLLECTION OF
22 SUBROUTINES OR A LIBRARY, AS WE CALL IT. IT'S KIND OF
23 BORROWING BOOKS FROM A LIBRARY. YOU BORROW CODE FROM A CODE
24 LIBRARY. SO THIS IS A CODE LIBRARY PROVIDED BY ADOBE.

25 AND THE FIRST METHOD ON THE TOP LEFT IS A METHOD IN THIS

1 ADOBECF LIBRARY. ADOBECF LIBRARY. SO THIS IS CALLED WHEN YOU
2 WANT TO GET A LICENSE. AND SO THERE'S A LONG SERIES OF CALLS.
3 AN IMPORTANT ONE IS -- IS THE METHOD IN THE LOWER LEFT, WHICH
4 IS:

5 "GETLOCALLICENSEFORPLAY," WHICH IS -- THAT'S RIGHT --
6 WHICH CHECKS TO SEE IF THE LICENSE IS PRESENT LOCALLY.

7 Q. ALL RIGHT. THANK YOU.

8 AND I BELIEVE YOU SAID MR. JONES HAD MENTIONED ADOBECF.
9 IS THAT THE SAME ADOBECF THAT IS SHOWN HERE IN YOUR SOURCE
10 CODE CITATIONS?

11 A. THAT'S RIGHT.

12 Q. OKAY. LET'S TURN TO THE SECOND ELEMENT OF THE '541.
13 REQUESTING PERMISSION FROM AN EXTERNAL SOURCE.

14 A. OKAY.

15 Q. WHAT ABOUT PLAINTIFF'S EXHIBIT 67 SHOWS THAT ELEMENT?

16 A. SO THE FIRST PARAGRAPH, IF I CAN READ THAT, IT SAYS:

17 "DURING LICENSE ACQUISITION" -- SO THIS IS THE CASE WHEN
18 YOU DON'T HAVE THE LOCALLY-STORED LICENSE -- "THE CLIENT SENDS
19 INFORMATION IDENTIFYING THE REQUESTED CONTENT, (THE DRM
20 METADATA) AND THE MACHINE CERTIFICATE (IDENTIFYING THE
21 CONSUMER'S COMPUTER) TO THE RETAILER'S LICENSE SERVER. THE
22 LICENSE SERVER (SIC) IS SENT TO THE SERVER, IS ENCRYPTED USING
23 THE TRANSPORT PUBLIC KEY, WHICH IS ALSO INCLUDED IN THE DRM
24 METADATA."

25 SO THIS CONSTITUTES THE REQUEST FOR THE PERMISSION FROM

1 THE EXTERNAL SOURCE.

2 Q. AND THAT EXTERNAL SOURCE IS WHAT?

3 A. THE LICENSE SERVER. OKAY.

4 Q. OKAY. DID ADOBE'S CORPORATE REPRESENTATIVE CORROBORATE
5 THAT UNDERSTANDING?

6 A. RIGHT. THIS IS ANOTHER EXCERPT FROM MR. JONES' INTERVIEW.
7 AND HE'S ASKED:

8 "WHEN IT SAYS HERE THE PROCESS OF ACQUIRING, QUOTE, 'THE
9 LICENSE,' CAN YOU DESCRIBE THAT PROCESS?"

10 AND HE SAYS:

11 "THAT WOULD BE AN HTTP REQUEST, WHICH INCLUDES IDENTIFYING
12 INFORMATION, SPECIFICALLY DRM METADATA AS PART OF THAT
13 REQUEST."

14 Q. THANK YOU. AND DID YOU REVIEW SOURCE CODE TO ENSURE THAT
15 YOUR OPINION WAS WELL-GROUNDED?

16 A. YES, I DID. IT IS ALSO ANOTHER COMPLICATED SERIES OF
17 EVENTS. IN THIS CASE, THE METHOD IN THE ADOBE CONTENT
18 PROTECTION LIBRARY, CP LIBRARY, CALLED "LICENSE DOWNLOAD."

19 THIS IS THE METHOD YOU WOULD USE TO DOWNLOAD THE LICENSE.
20 SO THERE IS A LONG SERIES OF EVENTS WE CAN STEP RIGHT THROUGH
21 IT.

22 I AM SORRY. THAT WAS THE LAST ONE THERE.

23 Q. OKAY.

24 A. SO THERE IS A METHOD IN THE CENTER THERE CALLED "ACQUIRE
25 LICENSE," WHICH SENDS A REQUEST TO A URL. A URL IS UNIFORM

1 RESEARCH LOCATER, WHICH IS WEB ADDRESS.

2 SO, ESSENTIALLY, IT IS A HTTP, OR WEB REQUEST TO GET THE
3 LICENSE.

4 Q. OKAY. LET'S TURN TO ELEMENT THREE OF CLAIM 1.

5 A. YES: "RECEIVING FROM THE EXTERNAL SOURCE A TOKEN."

6 Q. OKAY. WHAT TOKEN DID YOU IDENTIFY IN YOUR REPORT,
7 DR. DEVANBU?

8 A. SO THIS IS A LICENSE. AND THIS IS A DOCUMENT FROM ADOBE
9 THAT SAYS:

10 "A LICENSE IS A DATA STRUCTURE THAT INCLUDES AN ENCRYPTED
11 KEY USED TO DECRYPT CONTENT ASSOCIATED WITH A POLICY (SIC)."

12 Q. OKAY. AND DID YOU REVIEW SOURCE CODE IN ADDITION TO --

13 A. YES, I DID.

14 Q. SORRY. IF YOU CAN JUST LET ME FINISH MY QUESTION, SIR.

15 DID YOU REVIEW SOURCE CODE IN CONNECTION WITH ANALYZING
16 THIS THIRD ELEMENT?

17 A. RIGHT. SO THIS METHOD ACQUIRE LICENSE SENDS A REQUEST TO
18 AN EXTERNAL SOURCE WHICH, WHEN COMPLETED, RETURNS A LICENSE
19 TOKEN.

20 Q. ALL RIGHT. AND THAT CITATION, AGAIN, IS -- AN ASC
21 CITATION, WHAT DOES THAT INDICATE?

22 A. ADOBE SOURCE CODE.

23 Q. LET'S TURN TO THE FINAL ELEMENT. DID YOU FIND ANY
24 TESTIMONY FROM ADOBE'S CORPORATE REPRESENTATIVE, MR. JONES,
25 RELEVANT TO YOUR ANALYSIS?

1 **A.** THAT'S RIGHT. SO, BASICALLY, THE PERMISSION THAT IS
2 RECEIVED IS -- PERMISSION THAT IS PRODUCED AS A RESULT OF THE
3 INSTALLATION PROCESS IS LOCKED UNIQUELY TO THE CLIENT. AND
4 MR. JONES SAYS THAT -- HE IS ASKED THE QUESTION:

5 "CAN A CONSUMER MOVE A LICENSE FROM ONE MACHINE TO ANOTHER
6 AND STILL BE ABLE TO DECRYPT THE CONTENT?"

7 AND HE SAYS:

8 "THEY COULD MOVE THE LICENSE. THEY COULD MOVE THE CONTENT
9 CONTAINER, BUT THEY WON'T WORK ON ANOTHER DEVICE."

10 SO IT IS LOCKED ON THE DEVICE.

11 **Q.** OKAY. WHAT IS THE FORM OF PERMISSION THAT YOU IDENTIFIED?

12 **A.** SO, THE TOKEN THAT IS RECEIVED IS A LICENSE. AND ONCE THE
13 LICENSE IS RECEIVED, THE CODE INDICATES THAT IT'S FIRST
14 VALIDATED. AND THIS IS A COMPLEX PROCESS. DEPENDS ON THE
15 BUSINESS SETTING IT'S USED IN.

16 AND ONCE THE LICENSE IS VALIDATED, THEN THEY CAN EXTRACT
17 THE KEY FROM IT. THE KEY IS STORED INSIDE THE LICENSE IN AN
18 ENCRYPTED FORM. AND THE KEY HAS TO BE DECRYPTED. AND ONCE
19 THE KEY IS DECRYPTED, THEN THE CONTENT CAN BE DECRYPTED.

20 **Q.** SO IN YOUR OPINION IS THE PERMISSION IN THE FLASH SYSTEM
21 GENERATED FROM THE TOKEN?

22 **A.** YES, IT IS THE KEY.

23 **Q.** WHERE DOES THAT GENERATION OCCUR?

24 **A.** IT OCCURS IN THAT ROUTINE -- IN THE ROUTINE THAT I
25 MENTIONED, ACQUIRED LICENSE. IT CALLS SOME OTHER ROUTINES TO

1 CHECK THE LICENSE, MAKE SURE IT'S OKAY, AND THEN DECRYPT THE
2 KEY.

3 Q. AT THE SERVER SIDE OR THE CLIENT SIDE?

4 A. THE CLIENT SIDE.

5 Q. OKAY. THIS APPEARS TO BE AN OVERALL SUMMARY OF THE
6 PROCESS?

7 A. THAT'S RIGHT. THE LICENSE CONTAINS THE CONTENT ENCRYPTION
8 KEY. AND THIS KEY IS THE ONE THAT IS USED TO ENCRYPT THE
9 VIDEO CONTENT. AND THE CONTENT ENCRYPTION KEY IS ITSELF
10 ENCRYPTED WITH ANOTHER KEY BEFORE BEING PLACED IN THE LICENSE.

11 Q. WHAT DOES SLIDE 24 SHOW?

12 A. SO, BASICALLY IT SHOWS WHAT HAPPENS TO THE LICENSE ONCE IT
13 IS RECEIVED.

14 Q. AND THESE ARE A NUMBER OF SOURCE CODE CALLS RELATING TO
15 THAT?

16 A. THAT'S RIGHT.

17 Q. LET'S TURN TO -- AND I THINK THIS IS MORE SOURCE CODE
18 CALLS THAT YOU HAD IDENTIFIED?

19 A. WE ARE SHOWING ALL OF THE RELEVANT PARTS TO THE DIFFERENT
20 STEPS OF THE FOURTH ELEMENT OF THE CLAIM.

21 Q. I SEE. AND SO THOSE THAT ARE IDENTIFIED IN RED ARE
22 PERFORMED BY THE FUNCTIONS IN RED?

23 A. THAT'S RIGHT.

24 Q. SO DO I GATHER THAT THE PURPLE CLAUSE IS PERFORMED BY THE
25 SAME BOX AS THE TOP?

1 **A.** THAT'S RIGHT. ONCE THE KEY IS EXTRACTED, WE GO BACK TO
2 THE SAME METHOD THAT GOT THE LICENSE. AND THEN, THE
3 PERMISSION GETS STORED LOCALLY.

4 **Q.** ALL RIGHT, SIR. WAS THERE SOMETHING PARTICULARLY HELPFUL
5 ABOUT THIS EXCERPT FROM ADOBE'S CORPORATE REPRESENTATIVE,
6 MR. JONES? I AM SORRY. I'M FLIPPING AND CLICKING AT THE SAME
7 TIME. ALL RIGHT.

8 **A.** YES. SO, IT BASICALLY TALKS ABOUT HOW THE DRM -- SORRY --
9 THE RECEIVED LICENSE CONTAINS AN ENCRYPTED VERSION OF THE
10 CONTENT ENCRYPTION KEY.

11 **Q.** OKAY. AND JUST HELP ME UNDERSTAND WHAT'S PASSED AS THE
12 TOKEN. IF THAT WERE USED, COULD SOMEONE TAKE THAT TOKEN AND
13 GENERATE A PERMISSION FROM IT?

14 **A.** IF THE TOKEN WERE INTERCEPTED EN ROUTE BY SOMEBODY ELSE,
15 THEY WOULDN'T BE ABLE TO DO ANYTHING WITH IT, BECAUSE THE
16 IMPORTANT KEY THAT'S IN THE TOKEN IS ENCRYPTED WITH THE
17 MACHINE'S KEY. SO UNLESS YOU HAD THE MACHINE'S KEY, NOBODY
18 ELSE COULD REALLY ACCESS IT. ONLY THE RECEIVING MACHINE COULD
19 ACCESS IT.

20 **Q.** THANK YOU. WHAT WAS SIGNIFICANT ABOUT THIS EXCERPT FROM
21 MR. JONES' DEPOSITION?

22 **A.** SO BASICALLY HE'S TALKING ABOUT THE LICENSE BEING STORED
23 ON THE MACHINE. LICENSE CACHING. AND HE SAYS:

24 "LICENSE CACHING" -- SECOND SENTENCE -- "ALLOWS THE
25 CONSUMER TO VIEW PROTECTED CONTENT WITHOUT REACQUIRING THE

1 LICENSE EVERY TIME THEY WISH TO VIEW THE CONTENT."

2 Q. OKAY. AND ARE THERE MORE SOURCE CODE CITATIONS THAT YOU
3 HAVE HERE RELATIVE TO YOUR ANALYSIS?

4 A. YES. SO, THIS BASICALLY IS TALKING ABOUT HOW THE CONTENT
5 ENCRYPTION KEY IS DECRYPTED. IT IS A LONG SERIES OF CALLS.
6 AND THE LAST STEP IS UNFORTUNATELY IN THE LOWER LEFT, WHERE IT
7 SAYS:

8 "UNWRAP THE KEY USING MACHINE CREDENTIALS."

9 SO THERE IS A METHOD THAT ACTUALLY HAS A FAIRLY CLEAR
10 NAME. I UNWRAP THE KEY USING MACHINE CREDITS. SO IT DECRYPTS
11 THE CONTENT ENCRYPTION KEY USING THE MACHINE, SPECIFICALLY.

12 Q. ALL RIGHT, SIR. SO BASED ON YOUR VIEW OF THE SOURCE CODE
13 AND ADOBE'S CORPORATE REPRESENTATIVE'S DEPOSITION AND ADOBE'S
14 DOCUMENTS, HAVE YOU FORMED AN OPINION ABOUT WHETHER OR NOT
15 FLASH AND FLASH ACCESS INFRINGE CLAIM 1 OF THE '541 PATENT?

16 A. YES, IT DOES.

17 Q. LET'S MOVE ON TO CLAIM 2. AND CLAIM 2, AS WE'VE
18 DISCUSSED, TALK ABOUT THE STEPS OCCURRING AT A CLIENT. IS IT
19 YOUR OPINION THAT THE STEPS REQUIRED IN CLAIM 2 ARE PERFORMED
20 AT THE CLIENT?

21 A. THAT'S RIGHT.

22 Q. AND SO IS CLAIM 2, IN YOUR OPINION, INFRINGED BY THE FLASH
23 ACCESS FLASH --

24 A. PLAYER.

25 Q. -- COMBINATION?

1 **A.** YES.

2 **Q.** WHAT IS SHOWN HERE ON SLIDE 29?

3 **A.** IT JUST SHOWS THAT ALL THE SIGNIFICANT EVENTS IN CLAIM 1
4 ARE -- THE THREE STEPS SHOWN IN CLAIM 1 ARE OCCURRING IN
5 CLAIM 2 -- I AM SORRY -- ARE OCCURRING AT THE CLIENT.

6 **Q.** SO THAT'S THE PURPLE --

7 **A.** YES.

8 **Q.** -- CIRCLE?

9 ALL RIGHT. LET'S TURN TO CLAIM 4. THIS REQUIRES THAT THE
10 PERMISSION IS A UNIQUELY CODED KEY. DID YOU FIND THAT TO BE
11 PRESENT?

12 **A.** YES. THE KEY IS THE KEY THAT IS USED TO DECRYPT THE
13 CONTENT: THE CONTENT ENCRYPTION KEY.

14 **Q.** DOES ADOBE CALL IT A "KEY"?

15 **A.** YES.

16 **Q.** AND CAN YOU GIVE ME A LITTLE MORE DETAIL ABOUT THE KEY?

17 **A.** RIGHT. SO THIS IS TESTIMONY FROM MR. JONES, AND HE SAYS
18 THE CONTENT -- NEXT LINE -- HE'S REFERRED TO AN ADOBE
19 DOCUMENT, AND HE'S ASKED:

20 "WHAT ALGORITHM IS USED BY THIS KEY?"

21 AND HE SAYS:

22 "IT IS AN AES128 KEY."

23 **Q.** ALL RIGHT. AND ANYTHING ABOUT THIS, IN PARTICULAR, THIS
24 NEXT PASSAGE, THAT IS RELEVANT?

25 **A.** I THINK IT'S BASICALLY THE SAME INFORMATION, SO WE CAN

1 SKIP IT.

2 Q. ALL RIGHT. SO IS IT YOUR OPINION THAT CLAIM FOUR IS
3 INFRINGED BY FLASH ACCESS AND FLASH?

4 A. YES.

5 Q. LET'S TURN TO CLAIM 13.

6 WHAT DOES CLAIM 13 ADD? CAN YOU REMIND US?

7 A. YES. BASICALLY IT SAYS THAT WHEN THE CLIENT GENERATES A
8 REQUEST, IT MUST AT A SERVER GENERATE SOME KIND OF
9 AUTHORIZATION PROCEDURE, WHICH RESULTS IN THE TOKEN BEING
10 GRANTED OR NOT.

11 Q. ALL RIGHT. AND DID YOU FIND THAT TO BE PRESENT IN THE
12 FLASH AND FLASH ACCESS?

13 A. YES. SO IF YOU LOOK AT THE SECOND PARAGRAPH OF THIS
14 QUOTATION FROM ADOBE DOCUMENT -- ADOBE DOCUMENT -- IT SAYS:

15 "THE LICENSE SERVER WHICH MAY BE INTEGRATED INTO THE
16 RETAILER'S BILLING AND AUTHENTICATION INFRASTRUCTURE CAN
17 PERFORM A BUSINESS RULES CHECK TO VERIFY THAT THE USER IS
18 AUTHORIZED TO VIEW THE REQUESTED CONTENT."

19 SO THAT BUSINESS RULES CHECK SATISFIES THE AUTHORIZATION
20 PROCEDURE ELEMENT OF THE CLAIM.

21 Q. LET'S TURN TO THIS SLIDE. WHAT DOES THIS SHOW?

22 A. THIS JUST SHOWS WHAT CLAIM 13 REQUIRES, WHICH IS AT THE
23 REQUEST FROM THE CLIENT RESULTS IN SOME COMPUTATION AT THE
24 SERVER. AND THAT IS WHAT HAPPENS.

25 Q. A COMPUTATION OF WHAT KIND, SIR?

1 **A.** AUTHORIZATION PROCEDURE.

2 **Q.** AND THE FINAL SLIDE OF THIS PRESENTATION, WHAT IS SHOWN
3 HERE?

4 **A.** THIS BASICALLY, I BELIEVE, SHOWS THE REQUEST FROM THE
5 CLIENT THAT GOES OUT TO A SERVER, THEREBY GETTING AN
6 AUTHORIZATION PROCEDURE. SO IT IS THAT METHOD, THE CENTRAL
7 METHOD ACQUIRE LICENSE THAT SENDS A REQUEST TO A PARTICULAR
8 WEBSITE, AND THAT WEBSITE EXECUTES AN AUTHORIZATION PROCEDURE.

9 **Q.** ALL RIGHT, DR. DEVANBU. GIVEN YOUR ANALYSIS OF THE SOURCE
10 CODE, THE DOCUMENTS AND THE ADOBE TESTIMONY, WHAT IS YOUR
11 OPINION RELATIVE TO CLAIM 13 AND WHETHER IT IS INFRINGED BY
12 FLASH?

13 **A.** IT IS INFRINGED.

14 **Q.** NOW, DR. DEVANBU, IN YOUR REPORT DID YOU CONSIDER SOME
15 POSSIBLE ALTERNATIVES TO THE APPROACH THAT WAS OUTLINED OR
16 INVENTED BY MR. PATTERSON?

17 **A.** YES.

18 **Q.** AND WAS ONE SUCH APPROACH PHYSICAL PROTECTION?

19 **A.** THAT'S RIGHT.

20 **Q.** IN YOUR OPINION, ARE THERE DISADVANTAGES TO IMPLEMENTING
21 PHYSICAL PROTECTION RELATIVE TO THE INVENTIONS DISCLOSED IN
22 THE '541 AND '670 PATENTS?

23 **A.** RIGHT. SO PHYSICAL PROTECTION BASICALLY MEANS THAT YOU
24 HAVE SOME KIND OF -- LIKE, FOR EXAMPLE, USB DONGLE THAT PLUGS
25 INTO THE BACK OF YOUR COMPUTER. AND YOU CAN'T USE THE

1 SOFTWARE WITHOUT HAVING THE PHYSICAL DONGLE PRESENT.

2 SO IF SOMEBODY COPIES THE SOFTWARE, AND THEY DON'T HAVE
3 THE PHYSICAL DONGLE, THEY CAN'T USE THE SOFTWARE. SO,
4 OBVIOUSLY, THAT'S VERY INCONVENIENT AND WOULD BE VERY ANNOYING
5 TO USE. THAT IS ONE ALTERNATIVE.

6 Q. ALL RIGHT. WHAT ABOUT THE ALTERNATIVE OF PASSING A
7 PASSWORD IN THE OPEN WITHOUT ENCRYPTION? IS THAT A SUITABLE
8 ALTERNATIVE?

9 A. SO AS I EXPLAINED IF THE -- IF INFORMATION THAT COMES FROM
10 THE SERVER IS SENT IN THE CLEAR, WHATEVER THE INFORMATION IS,
11 ANYBODY COULD INTERCEPT IT AND USE IT FOR WHATEVER PURPOSE.
12 SO, YOU KNOW, SO SENDING PASSWORDS IN THE CLEAR WOULD BE VERY
13 INSECURE.

14 Q. ALL RIGHT. THANK YOU, DR. DEVANBU.

15 MR. DINOVO: I HAVE -- I WILL PASS THE WITNESS.

16 **CROSS-EXAMINATION**

17 **BY MS. MEHTA:**

18 Q. GOOD MORNING, DR. DEVANBU.

19 A. GOOD MORNING.

20 Q. IT IS STILL MORNING, YES.

21 ALL RIGHT. I'M GOING TO START BY TALKING ABOUT SOME
22 BACKGROUND OF SOME OF THE ISSUES THAT YOU'VE BEEN DISCUSSING
23 ON YOUR DIRECT EXAMINATION. AND TO DO THAT, I AM GOING TO USE
24 SOME OF THE SLIDES THAT YOU PUT TOGETHER AND PRESENTED WITH
25 MR. DINOVO.

1 NOW, WHEN YOU WERE PUTTING TOGETHER YOUR PRESENTATION FOR
2 YOUR DIRECT EXAMINATION, YOU REVIEWED THE SLIDES CAREFULLY,
3 RIGHT?

4 A. YES.

5 Q. AND YOU WANTED TO BE AS ACCURATE AS YOU COULD?

6 A. YES.

7 Q. AND SO THE SLIDES THAT YOU PRESENTED ARE AN ACCURATE
8 REPRESENTATION OF YOUR OPINIONS IN THE CASE, CORRECT?

9 A. YES.

10 Q. OKAY. GOOD.

11 MS. MEHTA: MR. BONINI, IF YOU COULD PUT UP DI028,
12 WHICH IS ONE OF THE SLIDES THAT DR. DEVANBU PRESENTED
13 YESTERDAY.

14 (PUBLISHED TO JURY.)

15 YOU SEE THIS, DR. DEVANBU?

16 A. YES.

17 Q. OKAY. AND THE REFERENCE IN THE MIDDLE IS A TYPO. IT
18 SHOULD BE MR. PATTERSON AND NOT MR. PETERSON.

19 A. I AM SORRY. SOUNDS RIGHT.

20 Q. NO PROBLEM. BUT WHAT I WANT TO TALK ABOUT, IN PARTICULAR,
21 IS THIS SLIDE WAS INTENDED TO CONVEY YOUR SUGGESTION THAT
22 MR. PATTERSON'S PATENTS ARE ALL ABOUT DRM, RIGHT?

23 A. RIGHT.

24 Q. OKAY. NOW, YOU'RE NOT ACTUALLY OFFERING ANY TESTIMONY
25 ABOUT WHAT MR. PATTERSON OR DIGITAL REG INVENTED, RIGHT? OR

1 MAY HAVE INVENTED?

2 **A.** I AM OFFERING TESTIMONY ABOUT WHETHER THE PATENTS INFRINGE
3 THE APPLICATIONS.

4 **Q.** RIGHT. SO YOU ARE NOT OFFERING ANY TESTIMONY TO THE JURY
5 ABOUT WHAT MR. PATTERSON OR DIGITAL REG MAY HAVE INVENTED,
6 RIGHT?

7 **A.** CORRECT.

8 **Q.** AND YOU'RE NOT ABLE TO DESCRIBE WHAT YOU BELIEVE THE
9 ADVANTAGES OF THE PATENTS ARE IF THERE ARE ANY ADVANTAGES,
10 RIGHT? THAT IS NOT SOMETHING YOU CONSIDERED.

11 **A.** YOU MEAN, WHAT THE -- HOW THE PATENTS ARE SUPERIOR TO
12 OTHER APPROACHES TO DIGITAL RIGHTS MANAGEMENT?

13 **Q.** RIGHT. YOU DON'T HAVE ANY OPINION WITH RESPECT TO WHETHER
14 OR NOT THERE ARE ANY ADVANTAGES TO MR. PATTERSON'S PATENTS
15 OVER THE PRIOR ART OR WHAT OTHER PEOPLE WERE DOING IN THE
16 INDUSTRY, CORRECT?

17 **A.** I'M NOT OPINING ON VALIDITY OF THE PATENTS.

18 **Q.** SO YOU ARE NOT OPINING ON ANY ADVANTAGES, IF THERE ARE
19 ANY, RIGHT?

20 **A.** NO. I'M OPINING ON INFRINGEMENT.

21 **Q.** YOU DO AGREE THAT DIGITAL REG WAS NOT THE FIRST COMPANY TO
22 THINK OF OR IMPLEMENT DRM, RIGHT?

23 **A.** THERE WERE DIGITAL RIGHTS MANAGEMENT REGIMES, IDEAS
24 FLOATING AROUND. YOU KNOW, I HAVE TO THINK. I HAVEN'T
25 CONSIDERED THAT. THAT IS SOMETHING THAT I HAVEN'T REALLY

1 THOUGHT ABOUT. I WASN'T ASKED TO DO THAT, SO I DON'T
2 REALLY -- I HAVE TO GO BACK AND LOOK AT THE LITERATURE. I
3 COULDN'T TELL YOU RIGHT NOW.

4 Q. I'M GOING POINT YOU TO YOUR DEPOSITION TESTIMONY. THIS IS
5 IN APRIL -- I AM SORRY -- JANUARY THIS PAST YEAR,
6 JANUARY 20TH.

7 A. IS IT IN HERE?

8 Q. YES. IT IS IN ONE OF YOUR BINDERS, ON PAGE 114 AT LINE
9 ONE. THE QUESTION WAS:

10 "SO YOU WOULD AGREE THAT DIGITAL REG WAS NOT THE FIRST
11 COMPANY TO IMPLEMENT DIGITAL RIGHTS MANAGEMENT?

12 "ANSWER: YES. YES, I DO."

13 THAT WAS YOUR TESTIMONY, RIGHT?

14 A. PAGE 114?

15 Q. 114 AT LINE ONE.

16 "QUESTION: SO YOU'D AGREE THAT DIGITAL REG WAS NOT THE
17 FIRST COMPANY TO IMPLEMENT DIGITAL RIGHTS MANAGEMENT?

18 "ANSWER: YES. YES, I DO."

19 DO YOU SEE THAT?

20 A. YES.

21 Q. THAT WAS YOUR TESTIMONY, RIGHT?

22 A. YES.

23 Q. AND WHEN YOU TESTIFIED IN THE DEPOSITION --

24 THE COURT: DO I HAVE HIS DEPOSITION?

25 MS. MEHTA: SORRY, YOUR HONOR. WE WILL GET THAT

1 RIGHT TO YOU.

2 **BY MS. MEHTA:**

3 **Q.** WHEN YOU TESTIFIED IN THE DEPOSITION YOU KNEW THAT YOU
4 WERE UNDER OATH, RIGHT?

5 **A.** YES.

6 **Q.** YOU KNEW IT WAS VERY IMPORTANT TO BE TRUTHFUL AND
7 ACCURATE, RIGHT?

8 **A.** YES.

9 **Q.** AND YOU KNEW IT WAS IMPORTANT TO PROVIDE FULL AND COMPLETE
10 OPINIONS, RIGHT?

11 **A.** YES.

12 **Q.** YOU DID ALL OF THOSE THINGS, RIGHT? AND YOU ACTUALLY HAD
13 PREPARED EXTENSIVELY FOR YOUR DEPOSITION, RIGHT?

14 **A.** CORRECT.

15 **Q.** YOU SPENT LOTS AND LOTS OF HOURS REVIEWING MATERIALS?

16 **A.** I DID.

17 **Q.** AND YOU REALLY HAD A LOT OF MEETINGS WITH COUNSEL FOR
18 DIGITAL REG TO PREPARE, RIGHT?

19 **A.** YES.

20 **Q.** AND YOU REVIEWED THE SOURCE CODE, AND THE DOCUMENTS,
21 RIGHT?

22 **A.** RIGHT.

23 **Q.** AND SO ALL OF THAT INFORMATION AND ALL OF THAT WAS WHAT
24 YOU WERE TESTIFYING ABOUT IN YOUR DEPOSITION.

25 **A.** THAT'S RIGHT.

1 Q. OKAY. NOW, YOU'VE PUBLISHED AN ACADEMIC PAPER ON DRM,
2 CORRECT?

3 A. THAT'S RIGHT.

4 Q. THAT WAS IN THE YEAR 2000?

5 A. THAT'S CORRECT.

6 Q. AND IN THAT PAPER YOU DESCRIBED A VARIETY OF DRM OR
7 DIGITAL RIGHTS MANAGEMENT TECHNOLOGIES, RIGHT?

8 A. I DID.

9 Q. AND YOU SEARCHED FOR COPY PROTECTION OR DRM PATENTS AS
10 PART OF YOUR ANALYSIS ON THAT PAPER, CORRECT?

11 A. IN SOME CASES, YES.

12 Q. AND YOU NEVER CAME ACROSS DIGITAL REG'S PATENTS AS PART OF
13 YOUR WORK IN DRM, RIGHT?

14 A. AT THAT POINT, NO.

15 Q. IN FACT, THE FIRST TIME YOU BECAME AWARE OF DIGITAL REG
16 WAS WHEN YOU GOT APPROACHED BY COUNSEL FOR DINOVO AT THE
17 DINOVO FIRM TO WORK ON THIS CASE, RIGHT?

18 A. RIGHT.

19 Q. YOU NEVER HEARD OF MR. PATTERSON BEFORE?

20 A. NO.

21 Q. NOW, YOU TESTIFIED JUST BEFORE THE CONCLUSION OF YOUR
22 DIRECT EXAMINATION THAT YOU'RE AWARE THAT THERE ARE
23 ALTERNATIVE DRM MECHANISMS, RIGHT?

24 A. RIGHT.

25 Q. AND ONE OF THE MECHANISMS YOU MENTIONED WAS PHYSICAL

1 PROTECTION?

2 A. RIGHT.

3 Q. AND YOU ALSO MENTIONED SENDING A PASSWORD IN THE CLEAR.

4 A. ON THE WAY BACK, YES.

5 Q. YES. NOW, YOU KNOW THERE IS ALSO OTHER ALTERNATIVES
6 BEYOND SIMPLY PHYSICAL PROTECTION AND PASSWORDS IN THE CLEAR,
7 RIGHT?

8 A. YES.

9 Q. ONE OPTION WOULD BE STREAMING CONTENT?

10 A. YES.

11 Q. AND YOU KNOW THE FLASH PLAYER STREAMS CONTENT, RIGHT?

12 A. RIGHT.

13 Q. SO YOU WOULD AGREE WHEN THE FLASH PLAYER STREAMS CONTENT
14 THAT IS AN ALTERNATIVE TO THE PATENTS, RIGHT?

15 A. SO ACCORDING TO THE DESCRIPTIONS OF THE WAY STREAMING
16 WORKS, WHEN YOU RECEIVE A STREAM AND IT IS PROTECTED YOU GO
17 THROUGH THE SAME PROCESS. YOU FIRST REQUEST A LICENSE, CHECK
18 FOR THE LICENSE, REQUEST A LICENSE. AND YOU GO THROUGH IT, SO
19 I WOULDN'T CONSIDER IT AN ALTERNATIVE.

20 Q. THAT WASN'T --

21 A. THAT DOESN'T --

22 Q. THAT WASN'T QUITE MY QUESTION. LET ME TRY TO REPHRASE IT
23 TO GET BACK TO THE HEART OF THE QUESTION. SO YOU AGREE THAT
24 STREAMING IS AN ALTERNATIVE TO MR. PATTERSON'S TECHNOLOGY IN
25 TERMS OF DRM, RIGHT?

1 **A.** I DON'T AGREE, BECAUSE IN STREAMING YOU WOULD STILL HAVE
2 TO, FIRST, YOU KNOW, DOWNLOAD THE CONTENT. IT IS DESCRIBED IN
3 YOUR DOCUMENT. I JUST READ IT RECENTLY. THAT YOU CAN -- YOU
4 CAN -- YOU'D HAVE TO FIRST ACQUIRE THE LICENSE, AND THEN GO
5 THROUGH THE SAME PROCESS.

6 **Q.** NOW, YOU WERE CAREFUL IN PREPARING YOUR EXPERT REPORT IN
7 THIS MATTER?

8 **A.** YES, I WAS. YEAH.

9 **Q.** AND YOU WERE TRUTHFUL AND ACCURATE IN THAT?

10 **A.** YES.

11 **Q.** IN YOUR EXPERT REPORT YOU EXPLAIN THAT ONE WAY TO ACHIEVE
12 AN ALTERNATIVE TO THE PATENTS WAS FOR VIDEO AND AUDIO CONTENT
13 TO MAKE IT AVAILABLE VIA STREAMING SO THAT CONTENT IS
14 AVAILABLE IN CHUNK-SPANNING LIMITED TIME PERIODS, RIGHT?
15 THAT'S AT PAGE 20 OF YOUR REPORT.

16 **A.** WHICH -- WHICH REFERENCE IS IT? I AM SORRY. I WANT TO
17 MAKE SURE I'M CLEAR ABOUT THE QUESTION AND ANSWER.

18 **Q.** IT IS GOING TO BE IN THE BINDER WITH YOUR EXPERT REPORT.
19 DO YOU SEE THAT?

20 **A.** I'M NOT SURE WHICH ONE IT IS. OKAY. IS IT --

21 **MS. MEHTA:** YOUR HONOR, MAY I APPROACH?

22 **THE COURT:** YES.

23 (COUNSEL ASSISTS WITNESS.)

24 **BY MS. MEHTA:**

25 **Q.** SO THIS IS ACTUALLY IN THE MAIN BODY OF THE REPORT AND NOT

1 IN THE CHARTS.

2 **A.** OKAY.

3 **Q.** I'M TALKING ABOUT PAGE 20. AND AT PAGE 20, YOU EXPLAINED
4 IN YOUR REPORT THAT ONE OF THE ALTERNATIVES TO THE PATENTED
5 TECHNOLOGIES IS FOR VIDEO AND AUDIO CONTENT TO BE STREAMED.
6 RIGHT?

7 **A.** OH, OKAY. RIGHT. SO -- SO IF -- IF THE VIDEO AND AUDIO
8 CONTENT IS -- THAT IS BEING STREAMED IS NOT NEEDING A
9 PROTECTION, LIKE, FOR EXAMPLE, IN YOUTUBE, THAT STREAM, AND
10 IT'S, YOU KNOW, CATS AND STUFF, AND NOBODY CARES ABOUT IT.
11 BUT IF YOU ARE STREAMING A VALUABLE MOVIE, THEN YOU WOULD WANT
12 TO PROTECT IT.

13 **Q.** YOU WILL AGREE, THOUGH, THAT THERE ARE -- IN THE CASES
14 WHERE SOMEONE IS STREAMING WITHOUT THAT SORT OF PROTECTION ON
15 IT, THAT THAT WOULD BE AN ALTERNATIVE TO THE PATENTS. THAT IS
16 WHAT YOU SAID IN YOUR REPORT.

17 **A.** IF YOU DON'T CARE ABOUT THE CONTENT, IF IT IS CAT VIDEOS,
18 YOU CAN STREAM IT. THERE IS NO DIGITAL RIGHTS MANAGEMENT
19 THERE.

20 **Q.** NOW, YOU TALKED A BIT ABOUT THE PATENTS AND DRM. IN YOUR
21 ANALYSIS, YOU DID NOT PROVIDE ANY OPINION THAT THE PATENTS
22 PROVIDE THE MOST PRACTICAL WAY OF IMPLEMENTING DRM, CORRECT?

23 **A.** SO IN MY REPORT I BASICALLY SAID IT'S A GOOD COMPROMISE,
24 YOU KNOW. ALL SECURITY FEATURES YOU HAVE TO COMPROMISE
25 BETWEEN CONVENIENCE AND SECURITY. THE MOST SECURE THING IS TO

1 NOT GIVE ANYTHING AWAY. BUT YOU HAVE TO MAKE THAT TRADE-OFF.
2 AND THIS IS A REASONABLE COMPROMISE.

3 Q. IT IS ONE REASONABLE COMPROMISE, BUT THERE IS LOTS, RIGHT?

4 A. IT DEPENDS ON THE PARTICULAR BUSINESS CONDITIONS UNDER
5 WHICH YOU ARE OPERATING. AND, YOU KNOW, EVERYBODY HAS TO
6 DECIDE HOW THEY WANT TO USE THEIR TECHNOLOGIES TO ACHIEVE THE
7 COMPROMISE THEY WANT TO ACHIEVE.

8 Q. RIGHT. AND YOU ARE NOT SAYING THAT THESE PATENTS PROVIDE
9 THE MOST PRACTICAL WAY OF DOING THAT?

10 A. THERE IS NO WAY TO SAY WHAT THE MOST PRACTICAL WAY IS.
11 ENGINEERING IS ALWAYS A TRADE-OFF. IN SOME SETTINGS SOMETHING
12 MAY BE BEST. IN OTHER SETTINGS SOMETHING ELSE MAY BE THE
13 BEST. SO --

14 Q. NOW, WITH RESPECT TO DRM, YOU PRESENTED IN DIRECT SOME
15 SLIDES RELATING TO PIRACY. DO YOU REMEMBER THAT?

16 A. I AM SORRY. I RATHER LOOK AT THE SLIDES, IF I MAY?

17 Q. YOU REMEMBER THE IMAGE OF THE BAD PIRATE?

18 A. GOT YOU, YES.

19 Q. JUST SO WE CAN MAKE SURE THE COURT REPORTER ISN'T GOING TO
20 HAVE PROBLEMS TRANSCRIBING, IF YOU DON'T MIND, PAUSE AND LET
21 ME FINISH MY QUESTION, AND I WILL TRY AND DO THE SAME.

22 WHEN YOU WERE TALKING ABOUT PIRACY WITH RESPECT TO THE
23 PATENTS, IT WAS NOT YOUR VIEW THAT THE PATENTS ARE A SOLUTION
24 TO PIRACY OR COPY PROTECTION, RIGHT?

25 A. SO I THINK I SAID IN MY REPORT THAT A DETERMINED ADVERSARY

1 CAN BREAK VIRTUALLY ANYTHING. BUT I THINK MOST PEOPLE WHO USE
2 COPY-PROTECTED CONTENT ARE NOT THAT DETERMINED OR NOT THAT
3 CAPABLE. SO --

4 Q. SO -- I AM SORRY.

5 A. ONE OF MY GRAD STUDENTS COULD POSSIBLY BREAK EVERYTHING.
6 BUT, YOU KNOW, YOUR TYPICAL USER IS NOT A COMPUTER SCIENCE
7 STUDENT. YOU KNOW, FOR THEM PROTECTION IS QUITE EFFECTIVE.

8 Q. YOU ARE NOT SAYING THAT THE DIGITAL REG PATENTS SOLVED THE
9 PROBLEM OF PIRACY, RIGHT? THAT IS NOT YOUR TESTIMONY?

10 A. NO.

11 Q. NOW, YOU ALSO DIDN'T DO ANY ANALYSIS TO QUANTIFY HOW
12 EFFECTIVE OR INEFFECTIVE THE DIGITAL REG PATENTS MIGHT BE IN
13 AVOIDING PIRACY, CORRECT?

14 A. I AM SORRY. I MISSED THAT QUESTION. CAN YOU PLEASE
15 REPEAT IT?

16 Q. SURE. YOU DIDN'T DO ANY ANALYSIS OF HOW EFFECTIVE OR
17 INEFFECTIVE THE DIGITAL REG PATENTS MIGHT BE AT AVOIDING
18 PIRACY, RIGHT?

19 A. NO, I DID NOT.

20 Q. NOW, I WANT TO DO A LITTLE BIT OF DISCUSSION AND EXPLORE A
21 LITTLE BIT YOUR -- THE BACKDROP THAT YOU HAD WHEN YOU WERE
22 FORMING YOUR INFRINGEMENT CONCLUSIONS.

23 SO, YOU SAID ON DIRECT EXAMINATION THAT YOU CONDUCTED AN
24 ANALYSIS AND DETERMINED THAT ADOBE'S THREE PRODUCTS THAT ARE
25 AT ISSUE IN THE CASE INFRINGE THE CLAIMS, RIGHT?

1 **A.** RIGHT.

2 **Q.** NOW, WHEN YOU STARTED WORKING ON THE CASE, THE PLAINTIFF'S
3 LAWYERS AT THE DINOVO FIRM, THEY HAD ALREADY PICKED THE CLAIMS
4 THAT THEY THOUGHT WERE INFRINGED BY ADOBE, RIGHT?

5 **A.** CORRECT.

6 **Q.** AND YOU DIDN'T ASK THE COUNSEL AT DINOVO WHY THEY PICKED
7 THOSE CLAIMS, RIGHT?

8 **A.** I DID NOT.

9 **Q.** AND WHEN YOU FIRST ACCEPTED THE ASSIGNMENT, YOU KNEW YOU
10 WERE GOING TO BE ASKED TO PROVIDE AN OPINION THAT THE ADOBE
11 PRODUCTS INFRINGE THOSE CLAIMS, CORRECT?

12 **A.** I GUESS THAT IS WHAT THEY WERE HOPING FOR. YES.

13 **Q.** AND IN MAKING THE DECISION TO ACCEPT THAT ASSIGNMENT, YOU
14 DIDN'T ACTUALLY ANALYZE THE MERITS OF ANY OF THE CLAIMS
15 AGAINST ADOBE, RIGHT?

16 **A.** SO, I DID KNOW THE CLAIMS, AND I DID KNOW THE PRODUCTS. I
17 WENT AND LOOKED THEM UP ON THE WEB. AND IT SEEMED REASONABLE.

18 **Q.** SO YOUR TESTIMONY IS THAT BEFORE YOU TOOK YOUR ASSIGNMENT
19 IN THIS CASE THAT YOU INVESTIGATED THE ADOBE PRODUCTS?

20 **A.** I DON'T KNOW WHICH ONES I LOOKED AT. I LOOKED AT SOME OF
21 THEM.

22 **Q.** ALL RIGHT. DR. DEVANBU, I'M GOING TO READ FROM YOUR
23 DEPOSITION AT PAGE 487, AT LINE 11, WHERE I ASKED YOU:

24 "SO ASIDE FROM YOUR WORK IN THIS CASE, IT IS SAFE TO SAY
25 THAT YOU DID NOT HAVE ANY PRIOR KNOWLEDGE AS TO HOW THE ADOBE

1 FLASH PLATFORM, ADOBE LIVECYCLE, ADOBE DIGITAL PUBLISHING
2 TOOLS AND ADOBE SOFTWARE DELIVERY AND LICENSING AND ACTIVATION
3 FUNCTION" --

4 **A.** WHICH LINE NUMBER ARE YOU LOOKING AT?

5 **Q.** LINE 11 ON PAGE 487.

6 AGAIN: "ASIDE FROM YOUR WORK IN THIS CASE, IT IS SAFE TO
7 SAY THAT YOU DID NOT HAVE ANY PRIOR KNOWLEDGE AS TO HOW THE
8 ADOBE FLASH PLATFORM, ADOBE LIVECYCLE, ADOBE DIGITAL
9 PUBLISHING TOOLS AND ADOBE SOFTWARE DELIVERY, LICENSING AND
10 ACTIVATION FUNCTION?

11 "ANSWER: YES."

12 **MR. DINOVO:** YOUR HONOR, IF I MIGHT OBJECT. THE
13 QUESTION IS IMPROPER IMPEACHMENT INsofar AS IT IS ASIDE FROM
14 HIS WORK IN THIS CASE.

15 **MS. MEHTA:** YOUR HONOR, THE --

16 **THE COURT:** IT IS NOT THE SAME QUESTION THAT YOU
17 ASKED, SO IF YOU WANT TO ASK HIM THIS ONE, YOU CAN.

18 **MS. MEHTA:** SURE.

19 **BY MS. MEHTA**

20 **Q.** SO I THINK THE QUESTION I ASKED YOU, DR. DEVANBU -- AND
21 LET'S BE CLEAR ABOUT THIS --

22 **THE COURT:** IF YOU WANT TO READ BACK A PRIOR
23 QUESTION, YOU CAN. IF YOU WANT TO ASK HIM THIS QUESTION, YOU
24 CAN.

25 **MS. MEHTA:** THAT'S WHAT I'M GOING TO DO, YOUR HONOR.

1 THANK YOU.

2 **BY MS. MEHTA:**

3 **Q.** SO ASIDE FROM YOUR WORK IN THIS CASE, MEANING BEFORE YOU
4 TOOK THE ASSIGNMENT --

5 **A.** RIGHT.

6 **Q.** -- YOU DIDN'T KNOW ANYTHING ABOUT THE ACCUSED PRODUCTS,
7 RIGHT?

8 **A.** BEFORE I TOOK ON THIS ASSIGNMENT -- WELL, YOU KNOW, I
9 GUESS I'D SEEN FLASH AND ACROBAT BUT --

10 **Q.** THAT WAS IT?

11 **A.** RIGHT. I DON'T KNOW IF YOU ARE ASKING ME: DID I DO ANY
12 UNPAID WORK FOR THEM? YES, I DID. SO WHEN THEY ASKED ME:

13 "DO YOU WANT TO WORK ON THIS," I WENT AND LOOKED THEM UP
14 ON THE WEB. YOU KNOW, WHAT ARE THEY TALKING ABOUT?

15 SO, YOU KNOW, BEFORE I STARTED CHARGING THEM FOR MY TIME I
16 DID TAKE A LOOK AND SEE ON THE WEB IF I COULD -- YOU KNOW, IF
17 THIS MADE SENSE. IF THERE WAS SOME DRM GOING ON IN THESE
18 PRODUCTS. YES, I DID.

19 **Q.** ASIDE FROM JUST TAKING A LOOK ON THE WEB, AT ADOBE'S WEB
20 PAGE, YOU DIDN'T HAVE ANY INFORMATION ABOUT HOW THE ACTUAL DRM
21 WORKED, RIGHT?

22 **A.** NO.

23 **Q.** YOU DIDN'T LOOK AT THE SOURCE CODE, RIGHT?

24 **A.** NOT REALLY, NO.

25 **Q.** YOU DIDN'T LOOK AT ANY OF THE DOCUMENTS THAT YOU WERE

1 CITING IN YOUR DIRECT EXAMINATION, RIGHT?

2 **A.** SO I DON'T RECALL EXACTLY WHAT ONLINE THINGS I LOOKED AT.
3 ANYTHING THAT IS -- PRETTY MUCH EVERYTHING THAT IS CITED CAN
4 BE FOUND ON THE WEB EVEN NOW. SO I MAY HAVE LOOKED AT SOME OF
5 THOSE. I DON'T REMEMBER WHAT I LOOKED AT. BUT I LOOKED AT IT
6 BEFORE I STARTED GETTING PAID, IF THAT IS WHAT YOU MEAN.

7 **Q.** IF YOU CAN SLOW DOWN?

8 **A.** OKAY.

9 **Q.** I KNOW YOU WANT TO ANSWER THE QUESTION AND GET OFF THE
10 STAND. I TOTALLY UNDERSTAND. BUT THE COURT REPORTER IS GOING
11 TO NEED TO HAVE YOU SLOW DOWN JUST A LITTLE BIT.

12 **A.** SORRY.

13 **Q.** NOW, WHEN YOU WERE COMING TO YOUR CONCLUSIONS ON
14 INFRINGEMENT, YOU DIDN'T CONSIDER THE PRIOR ART, RIGHT?

15 **A.** DID I CONSIDER THE PRIOR ART? I THINK I -- I THINK I SAID
16 I DIDN'T REALLY DO ANY -- SORRY -- VALIDITY ANALYSIS. SO I
17 DON'T KNOW ABOUT THAT.

18 **Q.** WHEN YOU FORMED YOUR OPINIONS ON INFRINGEMENT YOU WEREN'T
19 THINKING ABOUT THE PRIOR ART?

20 **A.** RIGHT.

21 **Q.** NOW, YOU TALKED A BIT ABOUT SOURCE CODE DURING YOUR DIRECT
22 EXAMINATION.

23 **A.** YES.

24 **Q.** AND YOU ALSO CITED A NUMBER OF INTERNAL ADOBE DOCUMENTS
25 AND ALSO PUBLIC ADOBE DOCUMENTS, RIGHT?

1 **A.** YES.

2 **Q.** AND YOU CITED DEPOSITION TESTIMONY FROM A NUMBER OF ADOBE
3 ENGINEERS.

4 **A.** YES.

5 **Q.** AND IN FORMING YOUR OPINIONS, YOU REVIEWED A NUMBER OF
6 DEPOSITION TRANSCRIPTS FROM ADOBE ENGINEERS, RIGHT?

7 **A.** YES.

8 **Q.** AND I THINK MR. DINOVO ASKED YOU ON DIRECT YOUR TESTIMONY
9 WAS BASED ON THE SOURCE CODE AND THE DOCUMENTS AND THE
10 DEPOSITIONS, RIGHT?

11 **A.** CORRECT.

12 **Q.** AND WHEN YOU DID ALL OF YOUR ANALYSIS AND YOUR REVIEW, THE
13 SOURCE CODE AND THE DOCUMENTS AND THE TESTIMONY WERE
14 CONSISTENT IN TERMS OF DESCRIBING HOW THE ADOBE PRODUCTS
15 WORKED, RIGHT?

16 **MR. DINOVO:** OBJECTION, COMPOUND.

17 **MS. MEHTA:** IT IS NOT COMPOUND, YOUR HONOR. I JUST
18 WANTED TO ASK --

19 **MR. DINOVO:** SHE IS ASKING EVERY STATEMENT MADE IN A
20 DEPOSITION IS CONSISTENT WITH EVERY DOCUMENT HE REVIEWED?

21 **THE COURT:** I GUESS SHE IS.

22 **MS. MEHTA:** YEAH.

23 **THE WITNESS:** I HAVE NO WAY OF KNOWING. I MEAN,
24 THERE IS A LOT OF STUFF. I WOULD HAVE TO LOOK AT EVERY SINGLE
25 THING TO SEE IF IT IS CONSISTENT.

1 **BY MS. MEHTA:**

2 **Q.** LET ME ASK YOU THIS QUESTION: WHEN YOU WENT THROUGH ALL
3 OF THE SOURCE CODE DOCUMENTS AND TESTIMONY THAT YOU RELIED
4 UPON TO CONCLUDE INFRINGEMENT, YOU DIDN'T FIND ANY INTERNAL
5 INCONSISTENCIES, RIGHT?

6 **A.** I WASN'T REALLY SEARCHING FOR INCONSISTENCIES. I WAS
7 TRYING TO UNDERSTAND WHAT WAS GOING ON.

8 **Q.** SURE.

9 **A.** YOU KNOW, IT'S DIFFICULT.

10 **Q.** AS YOU WERE TRYING TO UNDERSTAND WHAT WAS GOING ON YOU
11 REVIEWED THE SOURCE CODE AND THE DOCUMENTS AND THE TESTIMONY,
12 AND YOU FOUND THAT THE TESTIMONY AND THE DOCUMENTS
13 CORROBORATED YOUR REVIEW OF THE SOURCE CODE, RIGHT? THAT WAS
14 THE WORD YOU USED WITH MR. DINOVO?

15 **A.** SO I DON'T MEAN TO SOUND LIKE A WHIMP, BUT THERE ARE
16 THOUSANDS OF PAGES. AND I CAN'T REALLY ANSWER THAT QUESTION
17 IN GENERAL. I PREFER TO ANSWER IT SPECIFICALLY ABOUT SPECIFIC
18 THINGS THAT YOU WANT TO ASK MY ABOUT.

19 **Q.** FAIR ENOUGH. HOW ABOUT WE JUST LIMIT IT TO THE DOCUMENTS
20 AND THE TESTIMONY THAT WERE CITED IN YOUR DIRECT EXAMINATION.
21 OKAY?

22 **A.** OKAY.

23 **Q.** SO OVER THE COURSE OF THE LAST FEW DAYS YOU PRESENTED A
24 NUMBER OF PIECES OF SOURCE CODE, A NUMBER OF ADOBE DOCUMENTS
25 AND A NUMBER OF EXCERPTS OF DEPOSITION TESTIMONY FROM ADOBE

1 ENGINEERS, RIGHT?

2 A. RIGHT.

3 Q. AND ALL OF THAT EVIDENCE WAS CONSISTENT IN TERMS OF
4 DESCRIBING HOW THE ADOBE PRODUCTS WORK AS IT'S RELEVANT TO
5 YOUR OPINIONS IN THIS CASE, RIGHT?

6 A. CORRECT. YEAH.

7 THE COURT: YOU ALSO KEEP REFERRING TO "DIRECT BY
8 MR. DINOVO." BUT WAS THE DIRECT BY MR. DINOVO?

9 MS. MEHTA: YES, YOUR HONOR.

10 BY MS. MEHTA:

11 Q. NOW, WITH RESPECT TO ALTERNATIVES TO THE PATENT CLAIMS,
12 YOU DON'T KNOW WHAT DRM OR ACCESS CONTROL SOLUTIONS ADOBE
13 OFFERED PRIOR TO THE SPECIFIC ACCUSED PRODUCTS IN THIS CASE,
14 RIGHT?

15 A. I DON'T KNOW.

16 Q. AND YOU'RE NOT OFFERING ANY OPINION THAT THE ONLY WAY
17 ADOBE COULD DO DRM IS THROUGH THE SPECIFIC WAYS THAT ARE DONE
18 IN THE ACCUSED PRODUCTS NOW, RIGHT?

19 A. SO, I HAVEN'T FORMED AN OPINION ON THE CHOICES AVAILABLE
20 TO ADOBE.

21 Q. NOW, YOU UNDERSTAND THAT DIGITAL REG IS ACCUSING ADOBE OF
22 DIRECT INFRINGEMENT, CORRECT?

23 A. SAY AGAIN?

24 Q. YOU UNDERSTAND THAT DIGITAL REG IS ACCUSING ADOBE OF
25 DIRECT INFRINGEMENT. RIGHT?

1 **A.** I THOUGHT IT WAS INDUCED INDIRECT INFRINGEMENT. INDUCED
2 INDIRECT INFRINGEMENT.

3 **Q.** OKAY. SO YOUR OPINION IS THERE IS NO DIRECT INFRINGEMENT
4 BY ADOBE?

5 **A.** NO.

6 **Q.** NOW, WITH RESPECT TO SOME OF THE OPINIONS THAT YOU
7 PRESENTED, YOU REFERENCED A NUMBER OF TIMES WHO YOU WERE
8 THINKING HYPOTHETICALLY MIGHT BE USING THE ADOBE PRODUCTS,
9 RIGHT?

10 **A.** RIGHT.

11 **Q.** AND WHEN YOU CONCLUDED INFRINGEMENT, YOU DIDN'T ACTUALLY
12 IDENTIFY ANY ADOBE INDIVIDUAL OR ADOBE, AS AN ENTITY, AS
13 ACTUALLY PRACTICING ANY OF THE CLAIM STEPS, RIGHT?

14 **A.** WHICH CLAIM AND WHICH PRODUCT ARE WE REFERRING TO?

15 **Q.** WHY DON'T WE START WITH CLAIM 1 OF THE '541 PATENT?

16 **A.** OKAY.

17 **Q.** YOU DON'T HAVE ANYONE AT ADOBE YOU THINK HAS PRACTICED ALL
18 OF THE CLAIMS OF CLAIM 1, RIGHT?

19 **A.** SO FOR WHICH PRODUCT? FOR ACTIVATION, LIVECYCLE?

20 **Q.** WELL, WHY DON'T WE START WITH ACTIVATION?

21 **A.** OKAY.

22 **Q.** FOR ACTIVATION YOU ARE NOT CONTENDING THAT ANYONE AT ADOBE
23 HAS PRACTICED ALL THE STEPS, RIGHT?

24 **A.** NO.

25 **Q.** IN FACT, YOUR INFRINGEMENT THEORY FOR ACTIVATION REQUIRES

1 THAT THE STEPS BE PRACTICED BY A SERVER THAT'S POSTED BY ONE
2 ENTITY, AND -- I AM SORRY. I JUST GOT PASSED A NOTE. THE
3 TRANSCRIPT MAY BE UNCLEAR ON SOMETHING I ASKED YOU BECAUSE OF
4 THE WAY I PHRASED THE QUESTION. SO I APOLOGIZE. I'M GOING TO
5 ASK IT AGAIN JUST TO MAKE SURE WE ARE CLEAR.

6 **A.** OKAY.

7 **Q.** SO I ASKED YOU: IT'S YOUR OPINION THAT THERE IS NO DIRECT
8 INFRINGEMENT BY ADOBE. AND I JUST WANT TO MAKE SURE YOUR
9 ANSWER TO THAT IS THE AFFIRMATIVE, IN THAT THERE IS NO DIRECT
10 INFRINGEMENT BY ADOBE; IS THAT CORRECT?

11 **A.** SO, I WANT TO MAKE SURE I UNDERSTAND THE LEGAL TERMINOLOGY
12 HERE CORRECTLY. SO, IN CASE, FOR EXAMPLE, THAT THE LICENSE
13 MANAGEMENT SERVER IS OPERATED BY ADOBE, IN THE CASE OF THE
14 '670 THERE COULD BE DIRECT INFRINGEMENT.

15 **Q.** OKAY. LET'S FOCUS IN ON THE '541.

16 **A.** OKAY.

17 **Q.** YOU ARE NOT CONTENDING THAT ADOBE DIRECTLY INFRINGES THE
18 '541, CLAIM 1, CORRECT?

19 **A.** IT'S PERFORMED AT THE CLIENT AND WHOEVER IS RUNNING ADOBE
20 SOFTWARE.

21 **Q.** AND WITH RESPECT TO THE OTHER PRODUCTS FOR CLAIM 1 OF THE
22 '541, AGAIN YOU ARE NOT CONTENDING THAT THERE IS DIRECT
23 INFRINGEMENT BY ADOBE, RIGHT?

24 **A.** FOR THE CASE OF LIVECYCLE, WHOEVER IS USING ACROBAT PRO,
25 WITH LIVECYCLE RIGHTS MANAGEMENT ENABLED, WOULD BE INFRINGING

1 IT.

2 Q. THAT IS NOT ADOBE, THOUGH?

3 A. YES, IT IS CUSTOMERS OF ADOBE.

4 Q. AND WITH RESPECT TO FLASH, AGAIN, YOU ARE NOT CONTENDING
5 THAT ADOBE DIRECTLY INFRINGES CLAIM 1, RIGHT?

6 A. SO IN THE CASE OF '541 AND THE FLASH PRODUCT IT WOULD BE
7 THE ADOBE CONTENT PROTECTION LIBRARY THAT IS INFRINGING. AND
8 THAT WOULD BE BUILT INTO APPLICATIONS THAT ARE USED BY CLIENTS
9 TO VIEW VIDEO CONTENT.

10 Q. SO YOU ARE NOT CONTENDING THAT ADOBE INFRINGES CLAIM 1 OF
11 THE '541 PATENT DIRECTLY ON THE FLASH PLATFORM, RIGHT?

12 A. CORRECT.

13 Q. NOW, YOU MENTIONED EARLIER WITH RESPECT TO CLAIM 1 OF THE
14 '541 PATENT THAT YOUR INFRINGEMENT THEORY REQUIRES A USER AT
15 THE CLIENT, OR CLIENT AT THE USER, I SHOULD SAY, AND A SERVER,
16 RIGHT?

17 A. THIS IS FOR THE FLASH OR --

18 Q. I'M ACTUALLY ADDRESSING ALL OF THE PRODUCTS, BUT I CAN
19 BREAK IT DOWN, IF THAT IS HELPFUL.

20 A. THAT WOULD BE HELPFUL.

21 Q. WHY DON'T WE START WITH ALM?

22 A. OKAY.

23 Q. ALM, YOUR INFRINGEMENT THEORY FOR CLAIM 1 OF THE '541
24 PATENT REQUIRES THAT THERE BE A USER AND A SERVER, CORRECT?

25 A. RIGHT.

1 Q. AND THOSE WOULD BE TWO DIFFERENT ACTORS, ONE PROVIDING THE
2 USER AND ONE PROVIDING THE SERVER, RIGHT?

3 A. RIGHT. BUT ALL THE STEPS ARE PERFORMED AT THE CLIENT FOR
4 '541.

5 Q. AND WITH RESPECT TO LIVECYCLE, AGAIN, YOU NEED A CLIENT
6 AND YOU NEED A SERVER, RIGHT?

7 A. RIGHT. THE STEPS OF THE CLAIM ARE PERFORMED AT THE
8 CLIENT.

9 Q. SO YOUR VIEW IS THAT THE CLIENT ITSELF IS DIRECTLY
10 INFRINGING, AND THAT ADOBE IS NOT DIRECTLY INFRINGING BECAUSE
11 ALL OF THE STEPS ARE PERFORMED AT THE CLIENT?

12 A. THE CLIENT OPERATING THE ADOBE SOFTWARE IS INFRINGING.

13 Q. NOW, WHEN YOU WERE PREPARING YOUR OPINIONS IN THE CASE,
14 YOU WEREN'T FAMILIAR WITH THE CONCEPT OF JOINT INFRINGEMENT,
15 CORRECT?

16 A. I DON'T RECALL.

17 Q. SO YOU ARE NOT OFFERING ANY OPINION OF JOINT INFRINGEMENT
18 BY ADOBE, RIGHT?

19 A. IN THIS CASE THE TWO PATENTS THAT ARE BEING ASSERTED ARE
20 NOT JOINT INFRINGEMENT.

21 Q. AND YOU DID NOT OFFER ANY OPINIONS ON MULTIPLE PARTIES
22 WORKING TOGETHER TO INFRINGE, CORRECT?

23 A. I DON'T -- SO TALKING ABOUT THE PATENTS-IN-SUIT AND THE
24 CLAIMS-IN-SUIT, RIGHT NOW THERE IS NO JOINT INFRINGEMENT.

25 Q. NOW, I ALSO WANT TO TALK A LITTLE BIT ABOUT WHAT THE

1 FEATURES AND FUNCTIONALITIES ARE THAT YOU'VE OPINED ON AS
2 BEING PART OF THE INFRINGEMENT THEORY. YOU'LL AGREE WITH ME
3 THAT UNDER YOUR INFRINGEMENT THEORY, YOU'RE NOT CLAIMING THAT
4 THESE PATENTS COVER ALL OF THE FUNCTIONALITIES IN ACROBAT FOR
5 EXAMPLE, RIGHT?

6 **A.** I'M NOT SURE I UNDERSTAND THE QUESTION.

7 **Q.** SURE. YOU'RE NOT SUGGESTING THAT MR. PATTERSON'S PATENTS
8 COVER ALL OF THE FEATURES AND FUNCTIONALITIES IN ACROBAT, ARE
9 YOU?

10 **A.** RIGHT. IT JUST COVERS THE DIGITAL RIGHTS MANAGEMENT PART.

11 **Q.** AND EVEN UNDER YOUR THEORY IT IS ONLY THE ALM OR
12 ACTIVATION LIBRARIES THAT ARE IN THE PRODUCT THAT WOULD EVEN
13 BE ACCUSED, RIGHT?

14 **A.** CORRECT.

15 **Q.** AND THAT IS TRUE FOR ALL OF THE PRODUCTS THAT MIGHT BE
16 DELIVERED USING ADOBE'S ACTIVATION TECHNOLOGY, RIGHT?

17 **A.** AGAIN, IT WOULD BE BETTER IF YOU CAN TAKE IT BIT BY BIT.
18 IN THE CASE OF LIVECYCLE RIGHTS MANAGEMENT --

19 **Q.** MAYBE I CAN BE MORE CLEAR. I'M NOT TALKING ABOUT LIVECYCLE
20 RIGHT NOW.

21 **A.** OKAY.

22 **Q.** I'M JUST TALKING ABOUT ADOBE ACTIVATION, OR ALM.

23 **A.** YES.

24 **Q.** AND FOR ALM, FOR ANY CONTENT THAT'S DISTRIBUTED, YOUR
25 INFRINGEMENT THEORY IS LIMITED TO THE ALM OR ACTIVATION

1 LIBRARIES AND NOT THE REST OF THE CONTENT, RIGHT?

2 **A.** YES, THE LICENSE ACTIVATION TECHNOLOGY.

3 **Q.** AND SAME FOR LIVECYCLE, RIGHT? FOR LIVECYCLE YOU'RE
4 ACCUSING ONLY THE ACTIVATION OR ACCESS CONTROL, NOT THE
5 CONTENT ITSELF, CORRECT?

6 **A.** THE RIGHTS MANAGEMENT PART, YES.

7 **Q.** AND FOR FLASH, AGAIN, YOU'RE ONLY ACCUSING THE ACCESS
8 CONTROL, NOT FLASH PLAYER OR THE CONTENT ITSELF, CORRECT?

9 **A.** CORRECT.

10 **Q.** NOW, YOU UNDERSTAND -- JUST TO GO BACK TO LIVECYCLE, YOU
11 UNDERSTAND FOR LIVECYCLE THAT LIVECYCLE CAN PROTECT A VARIETY
12 OF DIFFERENT DOCUMENT TYPES, RIGHT?

13 **A.** YES.

14 **Q.** IT CAN PROTECT PDF'S, RIGHT?

15 **A.** YES.

16 **Q.** AND WORD DOCUMENTS?

17 **A.** YES.

18 **Q.** NOW, YOU'RE NOT CONTENDING THAT MICROSOFT WORD INFRINGES
19 THE CLAIMS OF THE '541 PATENT, ARE YOU?

20 **A.** SO, IT'S THE CLIENT SIDE SOFTWARE THAT CONFORMS TO ADOBE'S
21 INSTRUCTIONS HOW THE LIVECYCLE MANAGEMENT PROTOCOL WORKS.
22 THAT WHOLE THING WOULD HAVE TO BE BUILT INTO MICROSOFT WORD OR
23 ONE OF THOSE PRODUCTS.

24 **Q.** BUT MICROSOFT WORD ITSELF ISN'T PART OF YOUR INFRINGEMENT
25 ALLEGATIONS?

1 **A.** IN THIS PARTICULAR CASE, I HAVEN'T ANALYZED ANY MICROSOFT
2 CODE.

3 **Q.** NOW, AGAIN, JUST TO TALK ABOUT YOUR OPINIONS WITH RESPECT
4 TO DRM, GENERALLY, BEFORE WE GET INTO THE DETAILS OF THE
5 CLAIMS, IN THE CONTEXT OF A PRODUCT THAT'S PROTECT BY DRM,
6 YOUR UNDERSTANDING IS THAT A CUSTOMER IS PURCHASING THE
7 PRODUCT FOR THE CONTENT, NOT FOR THE DRM OR ACCESS CONTROL,
8 RIGHT?

9 **A.** UM, RIGHT. SO, IF I BUY A MOVIE, I AM BUYING THE MOVIE TO
10 WATCH THE MOVIE, IF THAT IS WHAT YOU MEAN.

11 **Q.** ONE CLARIFICATION TO YOUR TESTIMONY FROM TESTIMONY. ON
12 DIRECT EXAMINATION, MR. DINOVO ASKED YOU ABOUT YOUR HOURLY
13 RATE FOR THE CASE, RIGHT?

14 **A.** RIGHT.

15 **Q.** AND I THINK YOU TESTIFIED THAT YOU WERE COMPENSATED AT
16 \$350, AND THEN THERE IS A DISCOUNT DOWN TO \$200 FOR SOURCE
17 CODE REVIEW?

18 **A.** 250.

19 **Q.** TO 250. NOW, THE REST OF YOUR WORK ON THE CASE, BESIDES
20 SOURCE CODE REVIEW --

21 **A.** YES.

22 **Q.** -- YOU WERE COMPENSATED AT A DIFFERENT RATE FOR THAT,
23 CORRECT?

24 **A.** THAT'S RIGHT.

25 **Q.** AND THAT WAS \$400 FOR ALL OF YOUR CONSULTING WORK PER

1 HOUR?

2 **A.** IT WAS 350 FOR CONSULTING AND 500 FOR TESTIFYING.

3 **Q.** IF YOU CAN TURN TO YOUR EXPERT REPORT AT PAGE 5 --
4 ACTUALLY, WHY DON'T I DO THIS? WHY DON'T I JUST ASK QUESTION
5 THIS WAY. SAVE YOU TIME.

6 **A.** OKAY.

7 **Q.** WITH RESPECT TO YOUR TESTIMONY --

8 **A.** YES.

9 **Q.** -- YOU'RE ACTUALLY BEING PAID \$500 FOR THAT?

10 **A.** YES.

11 **Q.** I WOULD LIKE TO TURN TO THE '541 PATENT NOW.

12 **A.** OKAY.

13 **MS. MEHTA:** HERE IT IS.

14 **THE COURT:** WHY DON'T WE TAKE A BREAK, THEN. IT'S
15 12:20. WE WILL BREAK UNTIL 12:35. REMIND ME TO SPEAK WITH
16 THE ATTORNEYS.

17 YOU MAY STEP DOWN. PLEASE BE BACK IN 15 MINUTES.

18 (PROCEEDINGS HELD OUTSIDE THE PRESENCE OF THE JURY.)

19 **THE COURT:** SO YOU WERE HAVING AN ISSUE AS TO WHETHER
20 THE YES/NO INFRINGEMENT WAS IN HIS REPORT, AND THEN YOU
21 CONCLUDED. SO WERE YOU ABLE TO GET IN EVERYTHING YOU WANTED
22 TO WITHOUT RESOLVING THAT ISSUE?

23 **MR. DINOVO:** I THINK SO, YOUR HONOR.

24 **THE COURT:** OKAY. AS LONG AS THERE IS NOT SOMETHING
25 ELSE YOU WANT, THEN I THINK WE HAVE RESOLVED IT.

1 **MR. DINOVO:** YEAH.

2 **THE COURT:** OKAY.

3 **MR. DINOVO:** YOUR HONOR, CAN I -- IN CASE IT COMES
4 UP -- I AM SORRY TO BE CASUAL ABOUT THIS. CAN WE -- I CAN
5 CONTINUE, IF I NEED TO, TO ASK ABOUT THE TOKEN ON REDIRECT. I
6 DON'T WANT TO HAVE ANOTHER SITUATION WITH THE JURY.

7 SO I AM JUST GOING TO ASK HIM WHETHER HIS ANALYSIS WHETHER
8 OR NOT THE TOKEN APPROVED THE TRANSACTION, WHICH YOUR HONOR
9 HAS RULED TWICE ON THIS ISSUE, ACTUALLY, ON SUMMARY JUDGMENT
10 AND THEN RECONSIDERATION THAT HE HAD. SO WE THOUGHT THIS
11 ISSUE WAS --

12 **THE COURT:** SHOW ME THE PAGE AND LINE WHERE HE TALKS
13 ABOUT THAT.

14 **MR. DINOVO:** ALL RIGHT.

15 **THE COURT:** IT IS NOT THE QUESTION OF THE COMMERCIAL
16 VERSUS THE TRANSACTION. IT IS THE QUESTION OF YES OR NO,
17 WHETHER OR NOT. COUNSEL SAYS THAT IS NOT IN HIS REPORT. IF
18 YOU THINK IT IS, GIVE ME A PAGE AND LINE, AND I WILL LOOK AT
19 IT. THE PAGE AND LINE YOU GAVE ME BEFORE OR SHE GAVE ME
20 BEFORE IT WASN'T IN.

21 **MR. DINOVO:** THANK YOU, YOUR HONOR.

22 (RECESS FROM 12:22 P.M.; RESUMED AT 12:48 P.M.)

23 (PROCEEDINGS HELD IN THE PRESENCE OF THE JURY.)

24 **THE CLERK:** REMAIN SEATED. COME TO ORDER. COURT IS
25 BACK IN SESSION.

1 **THE COURT:** GO AHEAD.

2 **BY MS. MEHTA:**

3 **Q.** DR. DEVANBU, DURING THE BREAK DID YOU TALK TO COUNSEL FOR
4 DINOVO?

5 **A.** YES, I DID.

6 **Q.** DID YOU KNOW THAT IT WAS INAPPROPRIATE TO CONSULT WITH
7 YOUR COUNSEL DURING A BREAK?

8 **A.** I DID NOT.

9 **THE COURT:** ACTUALLY, WE HAVE NOT MADE ANY SUCH RULE,
10 AND IT IS NOT UNIVERSAL. IF YOU WANT A RULE LIKE THAT, WE CAN
11 MAKE IT. YOU HAVEN'T MADE IT YET THAT I KNOW OF.

12 **MS. MEHTA:** WE WOULD. I AM SORRY, YOUR HONOR. I
13 THOUGHT WE HAD. I APOLOGIZE, BUT WE WOULD LIKE THAT REQUEST.

14 **MR. DINOVO:** NO OBJECTION, YOUR HONOR.

15 **THE COURT:** OKAY.

16 **BY MS. MEHTA:**

17 **Q.** NOW, ONE THING I WANTED TO CLEAR UP FROM BEFORE, AND THEN
18 I WILL GET TO THE '541.

19 **A.** OKAY.

20 **Q.** IS WE WERE TALKING ABOUT THE ANALYSIS YOU DID OR THE
21 REVIEW YOU DID OF ADOBE'S WEBSITE BEFORE YOU TOOK THE
22 ENGAGEMENT WITH DINOVO. DO YOU RECALL THAT?

23 **A.** THAT'S RIGHT, YES.

24 **Q.** YOU SAID YOU LOOKED AT SOME PUBLICLY-AVAILABLE PRODUCTS
25 ABOUT THE THREE PRODUCTS AT ISSUE.

1 **A.** I DON'T KNOW WHICH ONES I LOOKED AT, BUT I LOOKED AT SOME.

2 **Q.** NOW, THE REVIEW THAT YOU DID ON THE WEBSITE, THAT WAS
3 ENOUGH INFORMATION FOR YOU TO BE COMFORTABLE THAT YOU COULD
4 REASONABLY SUPPORT AN ALLEGATION THAT ADOBE INFRINGED?

5 **A.** NO.

6 **Q.** SO WHEN YOU TOOK THE ASSIGNMENT YOU DIDN'T HAVE ENOUGH
7 INFORMATION TO BE REASONABLE THAT ADOBE INFRINGED?

8 **A.** I WOULD HAVE LIKED TO LOOK AT THE SOURCE CODE AND SPEND
9 MORE TIME. I WASN'T WILLING TO SPEND ALL THE TIME WITHOUT
10 GETTING PAID FOR IT.

11 **Q.** SO YOU ACCEPTED THE ASSIGNMENT, AND YOU DIDN'T KNOW AT
12 THAT POINT IN TIME WHETHER YOU WERE GOING TO BE ABLE TO
13 SUPPORT THE ASSIGNMENT YOU WERE BEING GIVEN?

14 **A.** IT IS FEASIBLE, BUT I DIDN'T KNOW FOR SURE.

15 **Q.** NOW, WITH RESPECT TO THE '541, I WANT TO START BY TALKING
16 ABOUT THE FLASH PLATFORM?

17 **A.** OKAY.

18 **Q.** AND, IN PARTICULAR, THE CONCEPT OF PREDELIVERY.

19 **A.** OKAY.

20 **Q.** YOU ARE FAMILIAR WITH THAT, RIGHT?

21 **A.** YEAH.

22 **Q.** YOU REVIEWED THE TESTIMONY OF MR. JONES, RIGHT?

23 **A.** YES.

24 **Q.** YOU CITED THAT IN YOUR DIRECT EXAMINATION?

25 **A.** RIGHT.

1 Q. AND WE WATCHED THE VIDEO YESTERDAY. YOU WERE HERE FOR
2 THAT, RIGHT?

3 A. YES.

4 Q. NOW, YOU KNOW THAT MR. JONES TESTIFIED THAT THE FLASH
5 PLATFORM IS USED IN SITUATIONS IN WHICH A LICENSE IS
6 PREDELIVERED BEFORE THE USER ACTUALLY REQUESTS THE CONTENT,
7 RIGHT?

8 A. YES. HE ALSO SAID THAT --

9 Q. IF YOU CAN JUST FOCUS IN ON MY QUESTIONS, OKAY?
10 YOU DIDN'T REVIEW ANY SOURCE CODE RELATING TO PREDELIVERY
11 OF A LICENSE IN FLASH, RIGHT?

12 A. I DID NOT.

13 Q. AND YOU DON'T DISPUTE MR. JONES' TESTIMONY THAT THE FLASH
14 PLATFORM CAN BE USED IN SITUATIONS OF PREDELIVERY, RIGHT?

15 A. SURE.

16 Q. YOU ALSO DON'T HAVE ANY BASIS TO OPINE AS TO HOW MANY
17 USERS USED PREDELIVERY VERSUS NOT PREDELIVERY, RIGHT?

18 A. WHAT I CAN SAY IS THAT MR. JONES STATED IN HIS TESTIMONY
19 THAT ADOBE ENCOURAGES PEOPLE TO PROVIDE A LIMITED LICENSE ON
20 PREDELIVERY. AND THEN, WHEN THEY WANT MORE ACCESS, TO REQUEST
21 THEM TO UPGRADE.

22 Q. BUT YOU HAVE NO IDEA HOW MUCH IS DONE BY PREDELIVERY AND
23 HOW MUCH IS UPGRADE, RIGHT? YOU DON'T KNOW THAT.

24 A. IT SEEMS LIKE A RESTRICTED LICENSE ON PREDELIVERY,
25 ACCORDING TO MR. JONES' TESTIMONY, AND THEY ARE ENCOURAGED TO

1 UPGRADE TO A BETTER LICENSE.

2 Q. YOU DON'T KNOW WHAT THE BREAKDOWN OF THAT IS. THAT IS
3 WHAT I AM TRYING TO GET AT.

4 A. I DON'T KNOW.

5 MS. MEHTA: NOW, IF WE CAN PUT UP DI158, MR. BONINI.
6 (PUBLISHED FOR JURY.)

7 BY MS. MEHTA

8 Q. THIS IS ONE OF YOUR SLIDES FROM YOUR DIRECT EXAMINATION,
9 RIGHT?

10 A. OKAY.

11 Q. AND IN YOUR DIRECT EXAMINATION, THIS WAS INTENDED TO
12 ADDRESS THE REQUIREMENT THAT A PERMISSION BE RECEIVED FROM AN
13 EXTERNAL SOURCE, RIGHT?

14 A. THAT'S RIGHT.

15 Q. AND YOUR UNDERSTANDING IS THAT THE COURT'S CONSTRUCTION
16 REQUIRES A PERMISSION IS UNIQUELY LOCKED TO THE CLIENT, RIGHT?

17 A. THAT'S CORRECT.

18 Q. AND SO PRESUMABLY YOU ARE INTENDING TO CONVEY HERE THAT
19 FLASH HAS A PERMISSION OR A KEY THAT IS UNIQUELY LOCKED TO THE
20 CLIENT, RIGHT?

21 A. THAT'S RIGHT.

22 Q. AND IT'S TRUE THAT THAT KEY THAT YOU ARE POINTING TO IS
23 ACTUALLY LOCKED TO THE CLIENT AT A SERVER, RIGHT?

24 A. SO THERE'S TWO STEPS OF LOCKING. SO FIRST IS LIKE THE KEY
25 IS DECRYPTED AT THE CLIENT. AFTER BEING, YOU KNOW, ENCRYPTED

1 AT THE SERVER, IT IS DECRYPTED AT THE CLIENT. AND THEN,
2 IT'S -- THEN THE CLIENT CAN VIEW THE SOFTWARE, CORRECT.

3 Q. SO FAIR ENOUGH. BUT MY QUESTION WAS: THE LOCKING TO THE
4 CLIENT -- AND YOU CAN LOOK AT THIS DOCUMENT IF YOU NEED TO --
5 BUT THE LOCKING AT THE CLIENT ACTUALLY IS DONE AT THE SERVER,
6 RIGHT?

7 A. YES.

8 Q. AND YOU UNDERSTAND THAT IN THE FLASH PLATFORM OR THE FLASH
9 ACCESS PLATFORM A KEY CAN ACTUALLY BE LOCKED TO A DOMAIN,
10 RIGHT?

11 A. THAT'S CORRECT. THAT IS ANOTHER POSSIBILITY.

12 Q. AND DOMAINS WOULD BE MULTIPLE DIFFERENT USERS OR DEVICES?

13 A. THAT'S ONE USE OF FLASH ACCESS, CORRECT.

14 Q. THERE IS ALSO A USE OF FLASH ACCESS WHERE THE KEY IS
15 ACTUALLY NOT LOCKED TO A DEVICE AT ALL, RIGHT?

16 A. YOU'RE TALKING ABOUT A LICENSE THAT IS JUST COMPLETELY
17 OPEN.

18 Q. YES.

19 A. I SUPPOSE IT CAN BE USED THAT WAY.

20 Q. SO JUST SO WE ARE CLEAR, WITH RESPECT TO FLASH ACCESS,
21 THERE ARE INSTANCES IN WHICH A KEY, THE THING THAT YOU POINT
22 TO AS THE PERMISSION, IS NOT UNIQUELY LOCKED TO THE CLIENT
23 BECAUSE IT IS LOCKED TO MULTIPLE CLIENTS OR DEVICES, RIGHT?

24 A. THAT'S RIGHT, YES.

25 Q. AND THERE ARE INSTANCES WHERE IT IS NOT UNIQUELY LOCKED TO

1 THE CLIENT BECAUSE IT'S NOT LOCKED AT ALL, RIGHT?

2 **A.** CORRECT. YES.

3 **Q.** NOW, WITH RESPECT TO ALM, THE LOCKING OF THE E-LICENSE TO
4 A CLIENT THAT YOU POINTED TO --

5 **A.** SO CAN I BE CLEAR ABOUT SOMETHING HERE?

6 **Q.** MR. DEVANBU -- I AM SORRY -- DR. DEVANBU?

7 **A.** I WANT --

8 **THE COURT:** SORRY. I'M AFRAID THAT ISN'T POSSIBLE.
9 WE NEED TO MOVE ON TO ANOTHER QUESTION.

10 **THE WITNESS:** OKAY.

11 **MS. MEHTA:** THANK YOU.

12 **THE COURT:** IF THE ATTORNEY WHO CALLED YOU FEELS
13 SOMETHING NEEDS TO BE EXPLAINED WE WILL BE SURE TO ASK YOU
14 ABOUT THAT.

15 **THE WITNESS:** OKAY.

16 **BY MS. MEHTA:**

17 **Q.** NOW, I JUST WANT TO TURN TO THIS CONCEPT UNIQUELY LOCKING
18 FOR THE ALM FOR A MOMENT.

19 **A.** YES. OKAY.

20 **Q.** THE LICENSE THAT IS RECEIVED FROM THE SERVER, THE LOCKING
21 THAT YOU'RE POINTING TO THAT IS DONE AT THE SERVER, RIGHT?

22 **A.** SO, IN THE CASE OF ALM, THERE'S THE FLEX LM PACKAGE WHICH
23 ACTUALLY DOES THE ENCODING AND DECODING OF THE INFORMATION
24 THAT'S IN THE LICENSE. AND I --

25 **Q.** SO --

1 **A.** SORRY. GO AHEAD.

2 **Q.** I WANT TO FOCUS IN ON THE E-LICENSE YOU POINTED TO.

3 **MS. MEHTA:** MR. BONINI, IF YOU COULD PULL UP DI14 --
4 I AM SORRY -- DI44.

5 **BY MS. MEHTA**

6 **Q.** IN DI44, YOU ARE -- THIS IS WHAT YOU -- THIS IS WHAT YOU
7 ARE POINTING TO, RIGHT?

8 **A.** RIGHT.

9 **Q.** AND YOU ACTUALLY WERE POINTING TO THE E-LICENSE THAT COMES
10 OVER FROM THE SERVER AS THE THING THAT COMES FROM THE SERVER
11 TO THE CLIENT, RIGHT?

12 **A.** RIGHT.

13 **Q.** THAT IS ACTUALLY LOCKED TO THE CLIENT WHEN IT LEAVES THE
14 SERVER, RIGHT?

15 **A.** IT DEPENDS UPON HOW FLEX ACTION RESPONDS WORKS. I WASN'T
16 PROVIDED THE SOURCE CODE FOR FLEX. SO THE FLEX MAY BE, IN
17 FACT, USING A SYMMETRIC PROCESS WHERE THE KEY THAT'S USED AT
18 THE CLIENT AND THE SERVER ARE DIFFERENT.

19 SO IN ANY LICENSING MECHANISM THERE MAY BE LOCKING KIND OF
20 GOING ON AT THE CLIENT AND UNLOCKING GOING ON AT THE SERVER.
21 AND IT DEPENDS UPON WHICH KIND OF ENCRYPTION SCHEME IS USED.

22 **Q.** RIGHT. SO FOR ADOBE ACTIVATION LICENSING, ALM, YOU
23 ACTUALLY DON'T KNOW WHERE THE UNIQUE LOCKING TO THE CLIENT
24 HAPPENS AT ALL, RIGHT?

25 **A.** I DON'T KNOW WHAT KIND OF ENCRYPTION IS BEING USED THERE.

1 Q. AND YOU SAID THAT THIS FLEX ACTION RESPONSE CODE WASN'T
2 AVAILABLE TO YOU. YOU KNOW THAT THAT'S CODE ACTUALLY PROVIDED
3 BY A COMPANY CALLED "MACROVISION," RIGHT?

4 A. CORRECT.

5 Q. THAT IS PROPRIETARY MACROVISION TECHNOLOGY?

6 A. CORRECT.

7 Q. NOW, WITH RESPECT TO LIVECYCLE, SAME QUESTION: THE THING
8 THAT YOU POINT TO AS THE TOKEN OR THE KEY THAT COMES OVER FROM
9 THE SERVER, THAT IS ACTUALLY LOCKED TO THE CLIENT AT THE
10 SERVER, RIGHT, BEFORE IT LEAVES THE SERVER, CORRECT?

11 A. RIGHT. BUT THE PERMISSION --

12 Q. IF YOU CAN JUST FOCUS IN ON MY QUESTION.

13 A. OKAY.

14 Q. THANK YOU.

15 NOW, I'M GOING TO HONE IN SOME MORE ON THE CONCEPT OF
16 TOKEN AND PERMISSION WITH RESPECT TO FLASH.

17 A. OKAY.

18 Q. AND WITH RESPECT TO FLASH, YOU POINTED TO THE CEK, OR
19 CONTENT ENCRYPTION KEY, WITHIN THE DRM METADATA AS THE
20 PERMISSION, RIGHT?

21 A. CORRECT. YES.

22 Q. AND AS YOU APPLIED YOUR INFRINGEMENT ANALYSIS TO THE FLASH
23 PLATFORM, THE KEY THAT'S IN THE DRM METADATA IS ACTUALLY
24 GENERATED AT THE SERVER, AND THEN PASSED TO THE CLIENT,
25 CORRECT?

1 **A.** RIGHT. IT IS GENERATED AT THE SERVER AND PASSED TO THE
2 CLIENT IN ENCRYPTED FORM, AND IT IS REGENERATED AT THE CLIENT.

3 **Q.** RIGHT. BUT THE KEY, THE CEK THAT YOU ARE POINTING TO AS
4 THE PERMISSION, IT EXISTS AND WAS CREATED OR GENERATED AT THE
5 SERVER?

6 **A.** YES. IT IS REGENERATED AT THE CLIENT.

7 **Q.** WELL, IT IS NOT REGENERATED. IT IS DECRYPTED AND STORED.

8 **A.** WELL, THE THING IS THE LOCKING --

9 **Q.** DR. DEVANBU?

10 **A.** I'M TRYING TO ANSWER IT.

11 **Q.** HOLD ON JUST ONE SECOND.

12 **A.** OKAY.

13 **Q.** OKAY? I WANT TO BE VERY CLEAR ABOUT WHAT THE QUESTION IS.
14 MAYBE I WILL ASK IT THIS WAY: YOU AGREE THAT THE KEY, THE
15 CEK, EXISTS AT THE SERVER BEFORE IT LEAVES THE SERVER.

16 **A.** YES.

17 **Q.** LIFECYCLE.

18 **A.** OKAY.

19 **Q.** WITH RESPECT TO LIFECYCLE -- AND, AGAIN, HONING IN ON
20 THESE CONCEPTS OF PERMISSIONS -- YOUR UNDERSTANDING OF THE
21 CLAIM IS THAT IT REQUIRES THAT THE CLIENT CHECK LOCALLY TO SEE
22 IF A PRE-EXISTING PERMISSION EXISTS, RIGHT?

23 **A.** RIGHT.

24 **Q.** AND IF THERE IS NO PERMISSION, THEN AS REQUIRED BY CLAIM 1
25 OF THE '541, YOU WOULD HAVE TO REQUEST THE PERMISSION FROM THE

1 SERVER, CORRECT?

2 **A.** CORRECT.

3 **Q.** AND YOUR OPINION IS THAT THE SERVER WOULDN'T BE CONTACTED
4 IF THE PERMISSION IS ALREADY AVAILABLE TO THE CLIENT, RIGHT?

5 **A.** YES. IF IT'S AVAILABLE IN A CACHE IT DOESN'T HAVE ASK THE
6 SERVER.

7 **Q.** I WANT YOU TO ASSUME SOMETHING FOR ME, A HYPOTHETICAL, IF
8 YOU WILL.

9 IF YOU ASSUME THAT IN THE LIVECYCLE SYSTEM THE APPLICATION
10 ALWAYS ATTEMPTS TO COMMUNICATE WITH THE SERVER, EVEN IF IT
11 ALREADY HAS A PERMISSION, THEN YOU WOULD AGREE THAT THAT
12 LIMITATION IS NOT MET, RIGHT?

13 **MR. DINOVO:** I'LL OBJECT THAT THAT IS AN INCOMPLETE
14 HYPOTHETICAL, YOUR HONOR. SHE IS NOT SAYING WHEN THE SYSTEM
15 ATTEMPTS TO ACCESS THE SERVER.

16 **THE COURT:** OVERRULED.

17 **THE WITNESS:** SO, IF THE SYSTEM WERE TO CONTACT THE
18 SERVER BEFORE IT CHECKED THE CACHE, WHICH IT DOES, THEN YOU'RE
19 CORRECT.

20 **BY MS. MEHTA:**

21 **Q.** AND IF IT -- ACTUALLY, LET ME MOVE ON.

22 NOW, THERE'S ALSO IN THE PATENT THE REQUIREMENT OF SENDING
23 AND RECEIVING INFORMATION, RIGHT?

24 **A.** RIGHT.

25 **Q.** AND SO I ASSUME YOU'LL AGREE WITH ME THAT WHERE A DEVICE

1 IS OFFLINE, IT CAN'T SEND OR RECEIVE, CORRECT?

2 **A.** CORRECT.

3 **Q.** OKAY. LET'S TALK A LITTLE BIT ABOUT THE GENERATION OF
4 WHAT YOU SAY IS THE PERMISSION IN THE LIVECYCLE SYSTEM.

5 **A.** OKAY.

6 **Q.** SO, IN YOUR APPLICATION OF CLAIM 1 OF THE '541 PATENT TO
7 LIVECYCLE, THE INFORMATION THAT YOU POINT TO AS THE PERMISSION
8 THAT'S ACTUALLY CREATED OR GENERATED AT THE SERVER, AND THEN
9 PASSED TO THE CLIENT, CORRECT?

10 **A.** IT IS REGENERATED TO THE CLIENT, BECAUSE IF YOU SEND THE
11 KEY OR THE PERMISSION IN THE CLEAR, WITHOUT ENCRYPTING IT IN
12 SOME FORM, THEN IT CAN BE STOLEN.

13 **Q.** SO, DO YOU DENY THAT THE THING THAT YOU POINT TO AS THE
14 PERMISSION IS ACTUALLY GENERATED AT THE CLIENT?

15 **A.** THE KEY THAT IS GENERATED AT THE CLIENT? I AM SORRY. CAN
16 YOU ASK ME WHAT I'M DENYING AGAIN?

17 **Q.** YES. LET ME ASK YOU THE QUESTION AGAIN AND WE WILL SEE
18 WHAT YOUR ANSWER IS.

19 SO WITH RESPECT TO LIVECYCLE, YOU ARE POINTING TO THE
20 VOUCHER AS THE THING THAT GOES FROM THE SERVER TO THE CLIENT,
21 RIGHT?

22 **A.** YES.

23 **Q.** THAT'S THE PERMISSION, RIGHT?

24 **A.** THAT'S THE TOKEN, AND THE PERMISSION IS GENERATED FROM THE
25 TOKEN.

1 Q. THE PERMISSION IS ACTUALLY SOMETHING THAT'S WITHIN THE
2 VOUCHER?

3 A. YES, IN ENCRYPTED FORM.

4 Q. AND THE ENCRYPTED THING THAT'S WITHIN THE VOUCHER, THAT'S
5 ACTUALLY -- THAT EXISTS AT THE SERVER BEFORE THE VOUCHER IS
6 SENT, CORRECT?

7 A. RIGHT, AND IT IS REGENERATED TO THE CLIENT.

8 Q. NOW, WHEN YOU SAY SOMETHING IS REGENERATED TO THE
9 CLIENT -- I'M FOCUSING IN AGAIN ON LIVECYCLE -- YOU ARE
10 ACTUALLY JUST TALKING ABOUT DECRYPTING IT, RIGHT?

11 A. CORRECT.

12 Q. SO THE ACTUALLY INFORMATION THAT'S THE KEY THAT YOU'RE
13 POINTING TO WITHIN THAT VOUCHER, THAT INFORMATION EXISTED AT
14 THE SERVER. IT WAS SIMPLY ENCRYPTED.

15 A. YES.

16 Q. SO, THE ENCRYPTED KEY THAT YOU POINT TO AS THE PERMISSION
17 EXISTED AT THE SERVER.

18 A. RIGHT.

19 Q. BEFORE THE VOUCHER WAS TRANSMITTED TO THE CLIENT.

20 A. RIGHT.

21 Q. SAME QUESTIONS. I'M GOING TO FOCUS ON THE ALM PRODUCTS
22 NOW.

23 SO IN THE ALM PRODUCTS, THE THING THAT YOU POINT TO AS THE
24 PERMISSION IS THE E-LICENSE, RIGHT?

25 A. RIGHT.

1 Q. AND THE E-LICENSE, THAT IS GENERATED AT THE SERVER?

2 A. CORRECT.

3 Q. AND IT'S THEN PASSED TO THE CLIENT?

4 A. CORRECT.

5 Q. ALL RIGHT. LET'S TURN TO THE '670 PATENT.

6 A. OKAY.

7 Q. IN THE '670 PATENT, LET'S FOCUS ON CLAIM 45.

8 A. OKAY.

9 Q. CLAIM 45 REQUIRES UNDER YOUR INFRINGEMENT THEORY MULTIPLE
10 DIFFERENT ACTORS TO PERFORM THE STEPS OF THE CLAIM, CORRECT?

11 A. CAN I HAVE A LOOK AT THE CLAIM TO MAKE SURE I AM NOT
12 MISSING ANYTHING HERE?

13 Q. SURE. DO YOU HAVE IT IN FRONT OF YOU?

14 A. WHICH VOLUME? THERE'S THREE VOLUMES HERE.

15 MS. MEHTA: HOW ABOUT IF I DO THIS?

16 MR. BONINI, CAN YOU PLEASE PUT UP PX3? AND LET'S PUT
17 CLAIM 45 ON THE SCREEN.

18 BY MS. MEHTA

19 Q. DO YOU HAVE THAT?

20 A. I'VE GOT IT.

21 Q. UNDER YOUR INFRINGEMENT THEORY, DR. DEVANBU, CLAIM 45
22 REQUIRES MULTIPLE DIFFERENT ACTORS TO PERFORM THE STEPS OF THE
23 CLAIM, CORRECT?

24 A. WHAT DO YOU MEAN BY "ACTORS"?

25 Q. DIFFERENT ENTITIES OR PEOPLE.

1 **A.** SAME COMPANY. IT WOULD HAVE TO BE THE SAME COMPANY,
2 BECAUSE IT WOULD HAVE TO BE IN ONE TRUST DOMAIN.

3 **Q.** I'M GOING TO READ FROM YOUR DEPOSITION, AT PAGE 672, AT
4 LINE 9 THROUGH 12.

5 THE QUESTION WAS:

6 "WITH RESPECT TO CLAIM 45, THERE ARE MULTIPLE DIFFERENT
7 ACTORS THAT PERFORM THE STEPS OF CLAIM 45 UNDER YOUR
8 INFRINGEMENT THEORY, CORRECT?"

9 AND THE ANSWER WAS:

10 "YES."

11 THAT WAS YOUR TESTIMONY, RIGHT?

12 **A.** I AM SORRY. WHICH LINE NUMBER WAS IT AGAIN?

13 **THE COURT:** IT DOESN'T MATTER. IT CLEARLY WAS HIS
14 TESTIMONY, SO WE DON'T NEED HIM TO SAY IT WAS.

15 **BY MS. MEHTA:**

16 **Q.** WITH RESPECT TO THE '670 PATENT --

17 **A.** OKAY.

18 **Q.** -- I'M GOING TO TALK A LITTLE BIT ABOUT FIRST THE
19 INSTALLER FILE.

20 **A.** OKAY.

21 **Q.** YOU UNDERSTAND THAT WITH RESPECT TO THE ALM PRODUCTS, OR
22 ACTIVATION PRODUCTS, YOUR INFRINGEMENT THEORY IS BASED ON AN
23 INSTALLER FILE THAT CAN BE DOWNLOADED FROM ADOBE'S WEBSITE,
24 RIGHT?

25 **A.** NO. IT CAN BE MY GIVING THE SOFTWARE TO SOMEBODY ELSE ON

1 A USB STICK.

2 Q. LET'S LOOK AT DI64.

3 SO THIS IS YOUR SLIDE FOR ADOBE ACTIVATION FOR CLAIM 45,
4 RIGHT?

5 A. SURE.

6 Q. WHAT YOU ARE POINTING OUT HERE IS THE ADOBE DOWNLOADS PAGE
7 ON THE WEBSITE?

8 A. YES.

9 Q. AND YOU'RE SAYING THAT THE FILES ARE CREATED BY ADOBE?

10 A. YES.

11 Q. AND THEN, THEY ARE TRANSMITTED BY ADOBE VIA THE WEB,
12 RIGHT?

13 A. RIGHT.

14 Q. SO YOUR INFRINGEMENT THEORY THAT YOU PRESENTED ON DIRECT
15 EXAMINATION FOR ALM FOR CLAIM 45 WAS THE DOWNLOADING OF FILES
16 FROM ADOBE ON THE INTERNET, RIGHT?

17 A. WE DISCUSSED OTHER POSSIBILITIES, AS WELL. IN THE SLIDES
18 WE TALKED ABOUT DISTRIBUTING IT THROUGH EMAIL.

19 Q. SURE. BUT I WANT TO FOCUS ON THIS INFRINGEMENT THEORY.
20 AND THE RECORD WILL REFLECT WHETHER YOU DID THAT OR NOT. BUT
21 WITH RESPECT TO THIS INFRINGEMENT THEORY --

22 A. OKAY.

23 Q. -- THE THING THAT YOU'RE SUGGESTING, THE FILE THAT YOU'RE
24 SUGGESTING IS CREATED --

25 A. UH-HUH.

1 Q. -- AND DOWNLOADED --

2 A. UH-HUH.

3 Q. -- THAT FILE IS AN INSTALLER FILE, RIGHT?

4 A. YES.

5 Q. AND YOU AGREE THAT THE INSTALLER FILE DOESN'T ACTUALLY
6 HAVE ANY DRM ON IT AT ALL, RIGHT?

7 A. NO.

8 Q. IS THAT CORRECT OR --

9 A. CORRECT.

10 Q. AND YOU'LL ALSO AGREE THAT THERE ARE SITUATIONS IN WHICH
11 THE INSTALLER FILE THAT YOU POINTED TO THAT'S DOWNLOADED HAS
12 APPLICATION INSTRUCTIONS, BUT NOT THE SOFTWARE OR ELECTRONIC
13 CONTENT, CORRECT?

14 A. INSTALLER FILES' CONTENT ARE NOT KNOWN. IT COULD BE
15 ANYTHING.

16 Q. SO YOU DON'T KNOW -- OR, ACTUALLY, LET ME PHRASE IT A
17 LITTLE BIT DIFFERENTLY.

18 YOUR TESTIMONY -- ACTUALLY, I WILL DO IT EVEN MORE
19 CLEARLY.

20 YOU ARE NOT TESTIFYING THAT THE INSTALLER FILE THAT'S
21 BEING DOWNLOADED FROM THE WEBSITE HAS THE ELECTRONIC CONTENT
22 OF THE SOFTWARE, RIGHT?

23 A. SO, THE INSTALLER FILE MAY RESULT IN ADDITIONAL FILES
24 BEING TRANSMITTED. SO WHEN YOU RUN THE INSTALLER YOU MAY GET
25 ADDITIONAL FILES THAT ARE TRANSMITTED.

1 Q. SO THE --

2 (SIMULTANEOUS COLLOQUY.)

3 A. SO, ACTUALLY, LET ME FINISH MY ANSWER. WHEN EVERYTHING IS
4 INSTALLED AND YOU TRY TO RUN IT, YOU WILL GO THROUGH THE DRM
5 REGIME.

6 Q. OKAY. BUT I DON'T WANT TO FOCUS ON WHAT HAPPENS ONCE THE
7 SOFTWARE GETS TO THE CLIENT, OKAY? PUT THAT OUT OF YOUR MIND
8 FOR A MOMENT.

9 WHAT I WANT TO HONE IN ON IS WHAT YOU WERE DESCRIBING IN
10 YOUR DIRECT EXAMINATION DURING THE SLIDE, WHICH IS THE PROCESS
11 OF CREATING AND DOWNLOADING THE FILE. ARE YOU WITH ME?

12 A. YES.

13 Q. IN THE PROCESS OF CREATING AND DOWNLOADING THE FILE FOR
14 THE ALM PRODUCTS, YOU WILL AGREE THAT THERE IS NO DRM FOR THE
15 INSTALLER FILE, RIGHT?

16 A. RIGHT.

17 Q. AND YOU WILL AGREE THAT THE INSTALLER FILE DOES NOT
18 NECESSARILY HAVE IN IT THE ELECTRONIC CONTENT. RIGHT?

19 A. YES. WE DON'T KNOW WHAT'S IN THERE. RIGHT.

20 Q. AND WHEN YOU REACHED YOUR CONCLUSION OF INFRINGEMENT, YOU
21 ACTUALLY DIDN'T IDENTITY ANY SITUATION IN WHICH SOMEBODY
22 DOWNLOADS AN INSTALLER FILE THAT HAS BOTH THE CONTENT AND THE
23 EXECUTABLE INSTRUCTIONS IN IT --

24 A. CORRECT.

25 Q. -- RIGHT?

1 **A.** CORRECT.

2 **Q.** NOW, YOU MENTIONED EARLIER THAT YOU, ON DIRECT
3 EXAMINATION, TALKED ABOUT A SITUATION IN WHICH SOFTWARE MIGHT
4 BE PASSED FROM ONE USER TO ANOTHER ON A THUMB DRIVE, FOR
5 EXAMPLE?

6 **A.** CORRECT.

7 **Q.** NOW, YOU HAVEN'T OFFERED ANY OPINION AS TO WHETHER IN THAT
8 HYPOTHETICAL THE THING THAT'S BEING PASSED IS THE INSTALLER
9 FILES OR THE ACTUAL UNDERLYING SOFTWARE CONTENT, RIGHT? YOU
10 JUST DON'T KNOW THAT?

11 **A.** I DON'T KNOW WHAT PEOPLE MIGHT DO. BUT IF THEY WERE TO
12 DISTRIBUTE THE COPY, THE EXECUTABLE FROM THEIR LAPTOP TO A USB
13 DISK, OR SOMETHING LIKE THAT, AND GIVE IT TO THEIR FRIEND,
14 THEN THE DRM WOULD PROTECT THE SOFTWARE.

15 **Q.** BUT YOU DON'T KNOW THAT THAT HAPPENS.

16 **A.** I THINK PEOPLE DO TRY TO PIRATE SOFTWARE.

17 **Q.** THAT IS NOT MY QUESTION. YOU HAVE NOT IDENTIFIED ANY
18 INSTANCE IN WHICH ANYONE HAS TAKEN ALL OF THE DIFFERENT FILES
19 THAT CAN BE INSTALLED ON THE COMPUTER AFTER THE INSTALLATION
20 PROCESS, GATHERED THEM UP, PUT THEM ON A THUMB DRIVE AND THEN
21 TAKEN THEM TO SOMEONE ELSE, RIGHT? YOU DON'T HAVE AN INSTANCE
22 OF THAT THAT YOU CAN POINT TO.

23 **A.** SO THE PREMISE OF YOUR QUESTION IS THAT THE FILES ARE
24 SCATTERED ALL OVER THE PLACE, THEY ARE NOT. THEY ARE IN A
25 SINGLE FOLDER. IN MANY OPERATING SYSTEMS YOU CAN JUST COPY

1 THAT FOLDER IN.

2 Q. ALL RIGHT. FAIR ENOUGH. YOU HAVE NOT OFFERED ON DIRECT
3 EXAMINATION OR IN YOUR REPORT OR ANYWHERE IN THIS CASE ANY
4 OPINION THAT ANYBODY OR ANY INSTANCE IN WHICH ANYBODY HAS EVER
5 TAKEN A FOLDER FROM THEIR LAPTOP WITH ALL THE FILES THAT ARE
6 REQUIRED FOR THE ELECTRONIC CONTENT AND PASSED THAT TO SOMEONE
7 ELSE, RIGHT? YOU HAVE NOT OFFERED THAT OPINION?

8 A. I HAVE -- I CAN'T SAY THAT I COULD LIKE TO ACCUSE ANYBODY
9 OF SOFTWARE PIRACY.

10 Q. LET'S TALK ABOUT THE ALM PRODUCT WITH RESPECT TO THE
11 SUCCESSIVE RECIPIENT LIMITATION.

12 A. OKAY.

13 Q. NOW, IN THE CASE WHERE YOU ARE RECEIVING THE INSTALLER
14 FILE --

15 MS. MEHTA: STRIKE THAT. LET ME MOVE ON TO SOMETHING
16 ELSE.

17 BY MS. MEHTA

18 Q. I WANT TO TURN TO THE UNTIL LIMITATION.

19 A. OKAY.

20 Q. YOU'RE FAMILIAR WITH THAT LIMITATION?

21 A. YES.

22 Q. AND YOUR UNDERSTANDING IS THAT THE CLAIM REQUIRES THAT THE
23 ACCESS TO THE ELECTRONIC CONTENT BE DENIED UNTIL THE
24 INFORMATION IS SUCCESSFULLY TRANSMITTED, CORRECT?

25 A. CORRECT.

1 Q. NOW, IN THE LIVECYCLE SYSTEM --

2 A. RIGHT.

3 Q. -- ENCRYPTED DOCUMENTS CANNOT BE OPENED UNTIL THE CLIENT
4 RECEIVES A VOUCHER FROM THE SERVER, CORRECT?

5 A. CORRECT.

6 Q. SO, IF SOMEBODY IS A USER, AND THEY WANT TO OPEN A
7 DOCUMENT THAT'S ON THE LIVECYCLE SYSTEM, THEY WOULD CONTINUE
8 TO BE DENIED ACCESS EVEN AFTER THE TRANSMISSION INFORMATION IS
9 SENT UNLESS AND UNTIL THEY GET A VALID VOUCHER BACK.

10 A. YES. FROM THE TIME BETWEEN THE TRANSMISSION OF THE
11 REQUEST AND THE RECEPTION OF THE ACCESS, ACCESS WOULD STILL BE
12 DENIED.

13 Q. OKAY.

14 A. BUT IT IS DENIED UNTIL IT IS TRANSMITTED.

15 Q. SO, IN OTHER WORDS, WHETHER OR NOT THE USER IS GOING TO
16 HAVE ACCESS TO THE CONTENT IS NOT DEPENDENT ON THE
17 TRANSMISSION OF THE INFORMATION, IT'S DEPENDENT ON RECEIVING A
18 VALID VOUCHER BACK, RIGHT?

19 A. IF THE TRANSMISSION FAILS, FOR WHATEVER REASON, AND THE
20 USER TRIES TO BLOCK THE TRANSMISSION, ACCESS WOULD BE DENIED.

21 Q. SO THAT IS ONE EXAMPLE WHERE ACCESS MIGHT BE DENIED?

22 A. RIGHT.

23 Q. BUT ANOTHER EXAMPLE WHERE ACCESS MIGHT BE DENIED IS A
24 SUCCESSFUL TRANSMISSION, BUT A VOUCHER THAT COMES BACK THAT IS
25 NOT VALID.

1 **A.** BOTH SCENARIOS ARE POSSIBLE, YES.

2 **Q.** SO MERELY SENDING A REQUEST FOR A VOUCHER IS NOT ENOUGH.

3 **A.** ENOUGH FOR WHAT?

4 **Q.** TO RECEIVE ACCESS TO THE CONTENT.

5 **A.** IT'S ENOUGH TO BE -- NOT SENDING IS ENOUGH TO BE DENIED.

6 **Q.** WELL, I WANT TO PUT IT A LITTLE BIT DIFFERENTLY. I WANT
7 TO UNDERSTAND WHAT IT IS THAT TRIGGERS THE ACCESS TO THE
8 CONTENT.

9 **A.** OKAY.

10 **Q.** THE ACCESS TO THE CONTENT IN THE LIVECYCLE SYSTEM IS
11 TRIGGERED BY THE RECEIPT OF INFORMATION BACK FROM THE SERVER,
12 NOT JUST THE SENDING OF THE REQUEST, CORRECT?

13 **A.** RIGHT.

14 **Q.** THE SAME IS TRUE FOR ALM, CORRECT? FOR ALM YOU NEED TO
15 SEND OUT THE NOTIFICATION INFORMATION AND RECEIVE A VALID
16 E-LICENSE BACK IN ORDER TO ACCESS CONTENT.

17 **A.** FOR ACCESS, YES.

18 **Q.** AND ACCESS WILL CONTINUE TO BE DENIED UNTIL YOU RECEIVE
19 BACK FROM THE SERVER A VALID E-LICENSE, CORRECT?

20 **A.** RIGHT.

21 **Q.** WE ARE TALKING ABOUT ALM RIGHT NOW, SO I WANT TO TALK
22 ABOUT ANOTHER ASPECT OF ALM THAT IS RELEVANT TO THE '670
23 PATENT. AND THAT IS A FEATURE CALLED "TRY AND BUY." ARE YOU
24 FAMILIAR WITH THAT?

25 **A.** YES.

1 Q. AND YOU UNDERSTAND THAT ADOBE PRODUCTS USE OR INCLUDE A
2 TRY AND BUY FEATURE, RIGHT?

3 A. CORRECT.

4 Q. AND TRY AND BUY IS A 30-DAY PERIOD WHERE A USER CAN ACCESS
5 ADOBE SOFTWARE WITHOUT PAYING, RIGHT?

6 A. RIGHT.

7 Q. NOW, YOU -- IN FORMING YOUR OPINIONS IN THE CASE, YOU
8 DIDN'T QUANTIFY HOW MANY USERS ACTUALLY ACTIVATE ADOBE
9 SOFTWARE AFTER THE 30-DAY TRY AND BUY PERIOD IS DONE, RIGHT?

10 A. I THINK ANYONE WHO PAYS ADOBE WILL ACTIVATE IT.

11 Q. YOU DON'T KNOW HOW MANY USERS DO THAT.

12 A. HOW MANY USERS GIVE ADOBE MONEY FOR THEIR SOFTWARE?

13 Q. RIGHT.

14 A. I DON'T KNOW.

15 Q. AND DURING THE TRY AND BUY PERIOD YOU GET 30 DAYS OF
16 UNRESTRICTED ACCESS TO THE SOFTWARE BEFORE YOU ARE DENIED THAT
17 ACCESS, RIGHT?

18 A. I HAVEN'T -- DON'T KNOW WHAT THE RULES ARE FOR DIFFERENT
19 PRODUCTS. I DON'T KNOW ABOUT WHAT FEATURES ARE ALLOWED UNTIL
20 THE -- 30-DAY PERIOD EXPIRES.

21 Q. IS IT FAIR TO SAY YOU CAN'T IDENTIFY ANY FEATURES IN ADOBE
22 SOFTWARE THAT ARE UNAVAILABLE DURING THAT 30-DAY PERIOD?

23 A. I DON'T KNOW.

24 Q. SO YOU CANNOT OFFER AN OPINION, THEN -- LET ME REPHRASE IT
25 DIFFERENTLY. YOU ARE NOT OFFERING AN OPINION, THEN, THAT IN

1 THE ALM CONTEXT WITHIN THE FIRST 30 DAYS ACCESS IS DENIED,
2 RIGHT? YOU JUST DON'T KNOW.

3 A. NO.

4 Q. IS THAT CORRECT?

5 A. CORRECT.

6 Q. NOW, IN THAT FIRST 30 DAYS DURING THE TRY AND BUY, IT'S
7 TRUE THAT THE APPLICATION THAT YOU'RE DOWNLOADING FROM THE
8 ADOBE WEBSITE WILL BE USABLE EVEN WITHOUT TRANSMITTING WHAT
9 YOU CALL "NOTIFICATION INFORMATION" TO THE SERVER AND
10 RECEIVING A RESPONSE BACK, RIGHT?

11 A. CORRECT.

12 Q. BEAR WITH ME FOR JUST ONE SECOND.

13 (PAUSE IN THE PROCEEDINGS.)

14 BY MS. MEHTA:

15 Q. DR. DEVANBU, I WOULD LIKE TO TURN TO OR TURN BACK TO THE
16 LIVECYCLE PRODUCT FOR A FEW MINUTES.

17 A. OKAY.

18 Q. AND, IN PARTICULAR, I WOULD LIKE TO TALK ABOUT THE
19 LIVECYCLE PRODUCTS WITH RESPECT TO THE '670 PRODUCT.

20 ACTUALLY, YOU KNOW WHAT? LET ME FOCUS ON '541. I
21 APOLOGIZE. LIVECYCLE FOR THE '541.

22 FOR THE '541 PATENT YOU ADDRESSED BOTH THE ONLINE AND THE
23 OFFLINE VERSIONS OF LIVECYCLE, CORRECT?

24 A. CORRECT.

25 Q. AND I'M GOING TO PULL UP YOUR SLIDES HERE BECAUSE I WANT

1 TO UNDERSTAND WHAT YOUR ANALYSIS WAS.

2 SO WITH RESPECT TO --

3 **MS. MEHTA:** LET'S PULL UP, IF YOU WOULD, MR. BONINI,
4 DI91.

5 **BY MS. MEHTA**

6 **Q.** THIS IS ONE OF YOUR SLIDES ON THE LIVECYCLE, RIGHT?

7 **A.** THAT'S CORRECT.

8 **Q.** AND THIS IS IN THE SECTION THAT RELATES TO AN ACCESS
9 CHECKING PROCEDURE, CORRECT?

10 **A.** CORRECT.

11 **Q.** AND WHAT YOU'RE POINTING TO HERE IS SOURCE CODE FOR ONLINE
12 ACCESS.

13 **A.** CORRECT.

14 **Q.** RIGHT?

15 **MS. MEHTA:** AND THEN, I WOULD LIKE TO FAST FORWARD A
16 LITTLE BIT, MR. BONINI, TO DI103 WHERE YOU TALK ABOUT STEP
17 FOUR.

18 **BY MS. MEHTA**

19 **Q.** DO YOU SEE THAT?

20 **A.** YES.

21 **Q.** AND THERE YOU HAVE EXCERPTED A DOCUMENT, RIGHT?

22 **A.** CORRECT.

23 **Q.** THAT IS THE DOCUMENT THAT YOU'RE RELYING ON TO SATISFY THE
24 LIMITATION THAT YOU HAVE HERE ON SLIDE DI103, THAT IS THE
25 BASED ON THE RECEIVED TOKEN, EXECUTING AN INSTALLATION PROCESS

1 THAT IS UNIQUELY LOCKED TO THE CLIENT.

2 A. CORRECT.

3 Q. THAT DOCUMENT THAT YOU'RE RELYING ON FOR THAT ELEMENT,
4 THAT ACTUALLY RELATES TO OFFLINE ACCESS.

5 A. CORRECT.

6 Q. NOW, YOU UNDERSTAND THAT WHEN A DOCUMENT IS OFFLINE, OR
7 WHEN A SYSTEM IS OFFLINE FOR LIVECYCLE, YOU CAN CONTINUE TO --
8 ACTUALLY, LET ME PHRASE IT A LITTLE BIT DIFFERENTLY. TAKE A
9 STEP BACK.

10 A USER OF THE LIVECYCLE SYSTEM THAT IS OFFLINE CAN HAVE
11 ACCESS TO ELECTRONIC CONTENT.

12 A. CORRECT.

13 Q. AND WHEN THEY ARE OFFLINE AND ACCESSING ELECTRONIC
14 CONTENT, THAT WOULD BE DONE EVEN WHEN THE NOTIFICATION
15 INFORMATION IS NOT SENT, RIGHT?

16 A. ACCESS WILL NOT BE GRANTED IF THE LEASE HAS EXPIRED.

17 Q. THAT WASN'T MY QUESTION, DR. DEVANBU. I WANT YOU TO FOCUS
18 IN ON MY QUESTION.

19 YOU'VE OFFERED AN OPINION OF INFRINGEMENT FOR LIVECYCLE
20 WHERE THE SYSTEM IS OFFLINE.

21 A. CORRECT.

22 Q. WHERE THE SYSTEM IS OFFLINE, YOU TESTIFIED EARLIER THAT
23 NOTIFICATION INFORMATION CAN'T BE TRANSMITTED, RIGHT?

24 A. IF IT'S OFFLINE, YES.

25 Q. AND YOU'LL AGREE WITH ME THAT A USER OF THE SYSTEM OFFLINE

1 CAN STILL ACCESS THE ELECTRONIC CONTENT.

2 **A.** THAT IS WHAT I WAS TRYING TO ANSWER. THEY CAN'T ACCESS IT
3 IF THE LEASE IS EXPIRED.

4 **Q.** YOU UNDERSTAND THAT THE WHOLE POINT -- I THINK YOU TALKED
5 ABOUT THIS ON DIRECT -- THE WHOLE POINT OF LIVECYCLE OFFLINE
6 ACCESS IS THAT PEOPLE CAN ACTUALLY USE DOCUMENTS WHEN THEY ARE
7 OFFLINE, RIGHT?

8 **A.** YES, THEY CAN. YES.

9 **Q.** AND IN ORDER TO DO THAT, THEY WOULD HAVE PERMISSIONS TO A
10 DOCUMENT THAT MIGHT BE STORED LOCALLY, RIGHT?

11 **A.** CORRECT.

12 **Q.** AND THAT MEANS THAT WHEN THAT USER IS SEEKING TO LOOK AT
13 THAT CONTENT, OR ACCESS THAT CONTENT, THEY WILL BE PERMITTED
14 TO ACCESS THE CONTENT EVEN WHEN THEY ARE NOT SENDING OUT
15 TRANSMISSION OR NOTIFICATION INFORMATION, CORRECT?

16 **A.** I'M JUST TRYING TO BE PRECISE. THEY CAN ACCESS IF THE
17 LEASE IS STILL VALID. IF THE LEASE IS INVALID -- IF THE LEASE
18 IS STILL VALID ON THE DOCUMENT. IF THE PERMISSION IS EXPIRED
19 THEY WILL NOT BE ABLE TO ACCESS IT.

20 **Q.** MAYBE I CAN REPHRASE THE QUESTION THIS WAY TO ADDRESS
21 THAT.

22 IN THE CASE OF SOMEBODY THAT IS OFFLINE WITH LIVECYCLE
23 ACCESSING CONTENT -- WELL, ACTUALLY, LET ME TAKE A STEP BACK
24 EVEN FURTHER AND MAKE THIS MORE PRECISE.

25 YOU'LL AGREE THAT LIVECYCLE IS INTENDED TO, IN YOUR VIEW,

1 ALLOW FOR OFFLINE ACCESS?

2 **A.** YES.

3 **Q.** AND SO IF IT'S INTENDED TO ALLOW FOR OFFLINE ACCESS, THEN
4 THERE ARE CIRCUMSTANCES IN WHICH THE INTENDED CIRCUMSTANCES,
5 IN FACT, IN WHICH A PERSON WILL HAVE A LEASE THAT'S VALID SO
6 THAT THEY CAN ACCESS CONTENT OFFLINE?

7 **A.** CORRECT.

8 **Q.** AND IN THOSE CIRCUMSTANCES, ACCESS TO THE CONTENT WILL NOT
9 BE DENIED BASED ON SENDING OR RECEIVING ANYTHING, RIGHT?

10 **A.** CORRECT.

11 **Q.** IN FACT, IN THAT -- IN THOSE CIRCUMSTANCES, THE INTENDED
12 OFFLINE USE CASE, ACCESS TO THE CONTENT IS FREELY AVAILABLE
13 REGARDLESS OF WHETHER YOU ARE SENDING OR TRANSMITTING
14 ANYTHING, RIGHT?

15 **A.** I DON'T KNOW WHAT YOU MEAN BY "INTENDED."

16 **Q.** LET ME REPHRASE THE QUESTION. THAT IS A FAIR POINT. I'M
17 JUST TRYING TO FOCUS IN ON THAT SCENARIO THAT WE TALKED ABOUT
18 FOR THE OFFLINE SITUATION.

19 **A.** CORRECT.

20 **Q.** A USER HAS ACCESS WHETHER OR NOT THEY ARE TRANSMITTING
21 ANYTHING, AS LONG AS THEY HAVE A VALID LEASE.

22 **A.** CORRECT.

23 **Q.** NOW, I WANT TO TOUCH ON A FEW ADDITIONAL AREAS. ONE OF
24 THEM IS THE -- YOU HAD SOME DISCUSSION EARLIER ABOUT ADOBE
25 USERS USING THINGS AND WHETHER OR NOT ADOBE INTENDS FOR USERS

1 TO USE CERTAIN THINGS?

2 A. YES.

3 Q. YOU DID THAT ON DIRECT EXAMINATION?

4 A. YES.

5 Q. NOW, YOU DON'T ACTUALLY HAVE ANY KNOWLEDGE OR DON'T HAVE
6 ANY INFORMATION AS TO WHAT ADOBE'S INTENTION IS WITH RESPECT
7 TO ITS USERS, RIGHT?

8 A. SO, ALL I CAN TELL IS FROM THE DOCUMENTS AND FROM THE
9 SOURCE CODE WHAT ACTIONS THE SOFTWARE WOULD PERFORM. YOU
10 KNOW, AS FAR AS, YOU KNOW, INTENTIONS FOR A LARGE COMPANY IT
11 IS DIFFICULT TO KNOW.

12 MS. MEHTA: I PASS THE WITNESS.

13 **REDIRECT EXAMINATION**

14 BY MR. DINOVO

15 Q. ALL RIGHT, DR. DEVANBU. JUST A FEW MORE POINTS ON
16 REDIRECT.

17 FIRST OF ALL, SIR, DO YOU KNOW -- THERE WAS SOME
18 DISCUSSION ABOUT YOUR OPINIONS ABOUT PRIOR ART. DO YOU KNOW
19 WHETHER OR NOT THE PARTIES HAVE ENGAGED AN EXPERT TO ANALYZE
20 THE VALIDITY OF THE PATENTS AND THE PRIOR ART WHO WILL BE
21 TESTIFYING LATER IN THE TRIAL?

22 A. I BELIEVE SO, YES.

23 Q. WAS THAT AN AREA OF RESPONSIBILITY OR SUBJECT MATTER OF
24 YOUR REPORT?

25 A. NO.

1 Q. WHAT WAS THE SUBJECT MATTER OF YOUR REPORT?

2 A. INFRINGEMENT.

3 Q. ALL RIGHT. THERE WAS ALSO SOME DISCUSSION ABOUT PRIOR TO
4 YOUR BEING ENGAGED WHAT YOU HAD DONE. DID YOU HAVE ACCESS TO
5 ALL THE SOURCE CODE THAT YOU ULTIMATELY REVIEWED BEFORE YOU
6 WERE ENGAGED?

7 A. NO.

8 Q. WHY NOT?

9 A. IT'S PROPRIETARY CONFIDENTIAL INFORMATION.

10 Q. DR. DEVANBU, I KNOW YOU'RE NOT A LAWYER, RIGHT?

11 A. I'M NOT.

12 Q. OKAY. DO YOU HAVE AN UNDERSTANDING AS TO THE DIFFERENCE
13 BETWEEN DIRECT AND INDIRECT INFRINGEMENT?

14 A. YES.

15 Q. WHAT IS YOUR UNDERSTANDING OF DIRECT INFRINGEMENT?

16 A. IS WHEN ONE PARTY PERFORMS ALL THE LIMITATIONS OF THE
17 CLAIM.

18 Q. ALL RIGHT. AND JUST TO CLEAR UP YOUR TESTIMONY ON CROSS,
19 IS IT YOUR OPINION THAT ADOBE DIRECTLY INFRINGES FOR ANY
20 PATENT RELATIVE TO ANY PRODUCT?

21 A. SO, IF THE LICENSE MANAGER IS OPERATED BY ADOBE, WHICH IT
22 CAN BE, THEN IT WOULD INFRINGE THE '670 PATENT.

23 Q. ALL RIGHT. SO, IT'S YOUR TESTIMONY, THEN, AND YOUR
24 OPINION THAT THERE IS DIRECT INFRINGEMENT IN THAT SITUATION?

25 A. CORRECT.

1 Q. AND IN THE OTHER SCENARIOS ARE YOU RELYING ON INDIRECT
2 INFRINGEMENT?

3 A. YES.

4 Q. YOU TESTIFIED ON CROSS THAT THERE WERE CERTAIN PROPRIETARY
5 ASPECTS OF THE INSTALLATION PROCESS IN ACTIVATION, RIGHT?

6 A. RIGHT.

7 Q. WHAT CAN YOU TELL THE JURY ABOUT THAT INSTALLATION
8 PROCESS? WHAT GOES ON BASED ON YOUR REVIEW OF THE SOURCE
9 CODE?

10 A. SO, IN ANY SITUATION LIKE THIS, WHEN SOME SECRET OR
11 IMPORTANT INFORMATION IS SENT AND TRANSMITTED, THEN THAT
12 SECRET INFORMATION HAS TO BE PROCESSED SOMEHOW AT THE CLIENT
13 TO DECODE THAT INFORMATION.

14 IF YOU SEND THIS KIND OF INFORMATION IN THE CLEAR THEN IT
15 CAN'T BE READ. SO THERE IS SOME PROCESSING THAT GOES ON AT
16 THE CLIENT TO DECODE IT.

17 SO IN THE CASE OF THE FLASH, THE FLASH SOFTWARE, THE KEY
18 THAT'S GENERATED AT THE SERVER IS ENCRYPTED WITH THE PUBLIC
19 KEY OF THE CLIENT. SO THE ENCRYPTED KEY THAT IS PRODUCED IS
20 TRANSMITTED TO THE CLIENT. AND THEN IT'S DECRYPTED USING THE
21 PRIVATE KEY OF THE CLIENT.

22 SO, IN FACT, THE KEY DATA THAT IS PRESENT AT THE SERVER
23 IS DIFFERENT THAN THE KEY DATA THAT IS PRODUCED AT THE CLIENT
24 BECAUSE IT IS ENCRYPTED USING THE PUBLIC KEY.

25 Q. SO YOU WERE TALKING ABOUT FLASH THERE?

1 **A.** THAT'S RIGHT.

2 **Q.** IN THE CONTEXT OF LIVECYCLE, HOW DOES THIS INSTALLATION
3 PROCESS INSTALL THE PERMISSION?

4 **A.** IN THE CASE OF THE --

5 **Q.** AND I AM JUST HAVING MY COLLEAGUE PUT UP THE CLAIM
6 LANGUAGE OF THE '541.

7 **A.** OKAY. SO IN THE CASE OF LIVECYCLE, WHEN THE KEY INSIDE
8 THE VOUCHER IS RECEIVED, IT IS STORED IN A CACHE AT THE
9 CLIENT.

10 NOW, IN THE CLIENT -- THE LOCKING PROCEDURE AT THE CLIENT
11 OCCURS BECAUSE THE KEY IS STORED -- THE KEY AND THE VOUCHER
12 ARE STORED IN A CACHE. NOW, THAT CACHE IS LOCKED TO SOMETHING
13 CALLED "A SECURITY SESSION" AT THE CLIENT.

14 YOU KNOW, SO, IN GENERAL, THERE ARE TWO KINDS OF SECURITY.
15 THERE IS CRYPTOGRAPHIC SECURITY AND SYSTEM SECURITY. THE
16 SESSION, THE SECURE SESSION THAT'S AT THE CLIENT IS KIND OF
17 SYSTEMS SECURITY. SO THE CACHE THAT IS STORED INSIDE THE
18 VOUCHER ON THE CLIENT IS SECURED BY HAVING A SECURED
19 SESSION -- IS LOCKED BY HAVING A SECURE SESSION.

20 **Q.** ALL RIGHT. OKAY. AND I THINK YOUR TESTIMONY WAS IN A
21 COUPLE OF INSTANCES THAT THERE WAS SOMETHING GENERATED AT THE
22 SERVER, AND THAT WAS SOMETHING ELSE REGENERATED AT THE CLIENT?

23 **A.** CORRECT.

24 **Q.** COULD YOU EXPLAIN WHAT YOU MEANT BY THAT?

25 **A.** OKAY. SO MAYBE WE CAN TAKE IT STEP BY STEP. SO IN THE

1 CASE OF THE -- CASE OF THE FLASH TECHNOLOGY, THE CONTENT
2 ENCRYPTION KEY IS ENCRYPTED. IT IS A SYMMETRIC ENCRYPTION.
3 THERE'S TWO DIFFERENT KEYS.

4 SO THE CONTENT ENCRYPTION KEY IS ENCRYPTED WITH THE PUBLIC
5 KEY OF THE MACHINE AT THE SERVER. AND THEN, IT'S TRANSMITTED
6 IN ENCRYPTED FORM TO THE CLIENT. AND THE CLIENT REGENERATES
7 THE KEY BY USING THE PRIVATE KEY OF THE CLIENT TO REGENERATE
8 THE KEY.

9 Q. OKAY. SO BEFORE WE MOVE AWAY FROM THAT EXAMPLE, IS WHAT
10 IS TRANSMITTED THE SAME AS THE KEY, OR IS IT DIFFERENT?

11 A. IT'S AN ENCRYPTED FORM OF THE KEY IN ALL CASES. IT HAS TO
12 BE.

13 Q. SO IS IT ACCURATE TO SAY THAT IF IT WERE INTERCEPTED IT
14 WOULD BE -- WOULD IT BE USEFUL OR NOT USEABLE?

15 A. IT WOULD BE USELESS.

16 Q. IN WHAT CONTEXT WOULD IT BE USEFUL FOR THE RECIPIENT?

17 MS. MEHTA: OBJECTION, YOUR HONOR. THIS IS OUTSIDE
18 THE SCOPE OF THE EXAMINATION.

19 THE COURT: OVERRULED.

20 THE WITNESS: SORRY?

21 BY MR. DINOVO

22 Q. IN WHAT CONTEXT WOULD IT BE USEFUL?

23 A. THE STEALING THE DATA THAT'S BEING TRANSMITTED OR --

24 Q. WELL, LET ME ASK THE QUESTION A DIFFERENT WAY. THE ONLY
25 WAY THE CLIENT CAN MAKE USE OF THE KEY IS IF IT ALREADY HAS

1 THE KEY THAT IT NEEDS TO DECRYPT, RIGHT?

2 **A.** RIGHT.

3 **Q.** OKAY. WITH RESPECT TO THE '541 PATENT, WHAT IS YOUR
4 UNDERSTANDING ABOUT WHETHER OR NOT THE MEANING OF THE CLAIM
5 AND THE COURT'S CONSTRUCTION ALLOWS THE RECEIPT OF INFORMATION
6 FROM A SERVER?

7 **A.** FROM THE SERVER, THE COURT SAYS THAT IT CAN RECEIVE A
8 TOKEN.

9 **Q.** OKAY. AND IS IT YOUR UNDERSTANDING AS A PERSON OF
10 ORDINARY SKILL IN THE ART IN VIEW OF THE COURT'S
11 CONSTRUCTIONS, THAT THE CLIENT CAN USE THE TOKEN TO GENERATE
12 THE PERMISSION?

13 **A.** THAT'S RIGHT. THE CLIENT CAN USE THE INFORMATION IN THE
14 TOKEN TO DECIDE WHETHER OR NOT TO GRANT ACCESS AND GENERATE A
15 PERMISSION.

16 **Q.** ISN'T THAT, IN FACT, REQUIRED BY THE CLAIM LANGUAGE THAT
17 IT USES THAT TOKEN TO GENERATE THE PERMISSION?

18 **A.** THAT'S RIGHT.

19 **Q.** IN THE COURSE OF YOUR CROSS YOU WERE ASKED ABOUT
20 LIVECYCLE, AND WHETHER THERE WERE MULTIPLE ACTORS. AND YOU
21 ASKED WHAT WAS MEANT BY "ACTOR" AND MENTIONED THE SAME
22 COMPANY. CAN YOU EXPLAIN WHAT YOU WERE INTENDING TO SAY
23 THERE?

24 **A.** SO, WHEN YOU OPERATE A LIVECYCLE SYSTEM, IT'S USUALLY
25 WITHIN THE CONTEXT OF ONE ORGANIZATION, ALTHOUGH IT DOESN'T

1 HAVE TO BE. USUALLY IN THE CONTEXT OF ONE ORGANIZATION WHICH
2 HAS DOCUMENTS IT WANTS TO PROTECT.

3 AND SO THE SERVER AND THE CLIENT ALL OPERATE WITHIN THE --
4 WITHIN THE FIREWALL OF ONE COMPANY. SO THEY CAN PROTECT THE
5 RIGHTS, PROTECT DOCUMENT ACCESS RIGHTS.

6 Q. ALL RIGHT. SO ALTHOUGH THERE MAY BE DIFFERENT PEOPLE IN
7 THE COMPANY, USERS, IT ADMINISTRATORS AND WHATNOT, IT'S YOUR
8 VIEW THAT THERE WOULD BE A SINGLE ACTOR IN THAT CONTEXT OR A
9 SINGLE PARTY?

10 A. A SINGLE PARTY OPERATING --

11 MS. MEHTA: OBJECTION.

12 THE COURT: EXCUSE ME.

13 MS. MEHTA: SORRY. OBJECTION, YOUR HONOR. THAT
14 LACKS FOUNDATION. CALLS FOR SPECULATION. HE HAS NO IDEA WHAT
15 ENTITIES DO WITH LIVECYCLE. AND IT IS LEADING.

16 THE COURT: REPHRASE IT AS A HYPOTHETICAL, I SUPPOSE.

17 BY MR. DINOVO

18 Q. ALL RIGHT, SIR. YOU'VE TESTIFIED THAT YOU THINK IT WOULD
19 BE TYPICAL -- DIDN'T YOU TESTIFY THAT YOU THINK IT WOULD BE
20 TYPICAL FOR AN ORGANIZATION TO RUN A LIVECYCLE SERVER?

21 A. YES. THERE ARE SEVERAL EXAMPLES --

22 THE COURT: I SAID YOU CAN REPHRASE IT AS A
23 HYPOTHETICAL.

24 MR. DINOVO: ALL RIGHT.

25 THE COURT: IF YOU WOULD LIKE TO DO THAT, GO AHEAD.

1 IF NOT, GO ON TO SOMETHING ELSE.

2 **MR. DINOVO:** FAIR ENOUGH.

3 **BY MR. DINOVO**

4 **Q.** DR. DEVANBU, HYPOTHETICALLY SPEAKING, WHY WOULD A COMPANY
5 WANT TO RUN A DIGITAL RIGHTS MANAGEMENT SERVICE WITHIN ITS
6 FIREWALL?

7 **A.** YOU'RE TALKING ABOUT LIVECYCLE RIGHTS MANAGEMENT.

8 **Q.** SURE.

9 **A.** SO THERE ARE SEVERAL EXAMPLES IN THESE DOCUMENTS, WHICH
10 ARE REAL CASE STUDIES OF COMPANIES THAT USE LIVECYCLE RIGHTS
11 MANAGEMENT.

12 **Q.** OKAY. BUT I'M JUST SAYING HYPOTHETICALLY WHY WOULD A
13 COMPANY WANT TO DO THIS INTERNALLY?

14 **A.** CASE STUDIES TALK ABOUT THINGS LIKE A COMPANY THAT HAS
15 DESIGN DOCUMENTS, AND THEY HAVE MULTIPLE LOCATIONS AROUND THE
16 WORLD, AND THEY WANT TO PROTECT ACCESS TO THE DESIGN DOCUMENTS
17 AND CONFINE THEM TO SOME COUNTRIES, FOR EXAMPLE.

18 **Q.** OKAY. LET'S TURN TO THIS NOTION OF, I THINK, TRY AND BUY.
19 DO YOU RECALL THAT DISCUSSION?

20 **A.** YES.

21 **Q.** IS TRY AND BUY PART OF YOUR INFRINGEMENT ANALYSIS?

22 **A.** NO.

23 **Q.** SO, YOUR INFRINGEMENT ANALYSIS IS TALKING ABOUT THINGS
24 THAT ARE NOT WITHIN THE TRIAL PERIOD; IS THAT RIGHT?

25 **A.** RIGHT.

1 **MR. DINOVO:** PASS THE WITNESS.

2 **RECROSS-EXAMINATION**

3 **BY MS. MEHTA:**

4 **Q.** YOU'RE ALMOST DONE JUST A FEW MORE QUESTIONS.

5 **A.** OKAY.

6 **Q.** IN FORMING YOUR OPINIONS IN THIS CASE, DR. DEVANBU, YOU
7 DIDN'T CONSIDER THE QUESTION OF WHETHER OR NOT THERE ARE
8 SUBSTANTIAL NONINFRINGING USES FOR THE ADOBE PRODUCTS, RIGHT?

9 **A.** SO I THINK YOU'RE ASKING ABOUT DIFFERENT KINDS OF
10 INFRINGEMENT. BUT -- SO MAYBE WE CAN TAKE IT STEP-BY-STEP AND
11 WE CAN --

12 **Q.** SURE. WHAT I'M ASKING -- MAYBE I WILL EVEN REPHRASE IT A
13 LITTLE BIT DIFFERENTLY.

14 WHEN YOU FORMED YOUR OPINIONS IN THE CASE, AND YOU DID
15 YOUR ANALYSIS, YOU DIDN'T EVEN KNOW WHAT SUBSTANTIAL
16 NONINFRINGING USES WERE, CORRECT?

17 HOLD ON FOR A SECOND. I AM JUST GOING TO REPEAT THAT FOR
18 THE COURT REPORTER.

19 WHEN YOU DID YOUR ANALYSIS IN THIS CASE, YOU DIDN'T EVEN
20 KNOW WHAT SUBSTANTIAL NONINFRINGING USES WERE, CORRECT?

21 **A.** AT WHICH POINT IN MY WORK?

22 **Q.** UP TO THE POINT YOU SUBMITTED YOUR REPORT.

23 **A.** I READ UP ON IT AT SOME POINT. I DON'T REMEMBER WHEN.

24 **Q.** LET'S GO TO YOUR DEPOSITION. AS OF THE TIME OF YOUR
25 DEPOSITION YOU DIDN'T KNOW WHAT SUBSTANTIAL NONINFRINGING USES

1 WERE, RIGHT?

2 A. I DON'T RECALL. SORRY.

3 Q. SO YOU ARE NOT OFFERING AN OPINION AS TO SUBSTANTIAL
4 NONINFRINGING USES?

5 A. SO -- OKAY. SO IF YOU CONSIDER LIVECYCLE RIGHTS
6 MANAGEMENT, FOR EXAMPLE --

7 Q. HOLD ON. I WANT TO BE VERY SPECIFIC. IN YOUR REPORT IN
8 THIS CASE YOU DIDN'T OFFER ANY OPINION WITH RESPECT TO
9 SUBSTANTIAL NONINFRINGING USES, RIGHT?

10 A. I DON'T BELIEVE I DID.

11 Q. NOW, YOU WERE TALKING A LITTLE BIT ABOUT THIS PROPRIETARY
12 FLEXNET TECHNOLOGY, RIGHT?

13 A. CORRECT.

14 Q. AND MR. DINOVO ASKED YOU ABOUT WHETHER OR NOT THERE WOULD
15 HAVE TO BE SOME SORT OF PROCESSING IN THAT CIRCUMSTANCE?

16 A. CORRECT.

17 Q. YOU DON'T ACTUALLY KNOW WHAT THE FLEXNET TECHNOLOGY DOES,
18 RIGHT?

19 A. IT WOULD HAVE TO BE SOMETHING CRYPTOGRAPHIC, OTHERWISE IT
20 WOULD BE INSECURE.

21 Q. BUT YOU DON'T HAVE ACCESS TO THE INFORMATION, THE
22 MACROVISION INFORMATION TO ACTUALLY KNOW WHAT IS DONE; IS THAT
23 RIGHT?

24 A. WE DIDN'T CITE ANYTHING ABOUT THAT, NO.

25 Q. YOU ALSO MENTIONED THAT IN THE CONTEXT OF LIVECYCLE --

1 **A.** YES.

2 **Q.** -- YOUR OPINION IS BASED ON CACHING OF A LICENSE?

3 **A.** CORRECT.

4 **MS. MEHTA:** MR. BONINI, IF YOU CAN PULL UP PX55 AT
5 PAGE 56.

6 AND THERE IS A FIGURE THERE IN THE MIDDLE. IF YOU CAN
7 BLOW THAT UP, PLEASE.

8 **BY MS. MEHTA**

9 **Q.** AND, DR. DEVANBU, THIS IS A FIGURE OF EXHIBIT 55 IN WHICH
10 IT DEPICTS A LIVECYCLE USE CASE, RIGHT?

11 **A.** OKAY. YES.

12 **Q.** AND WHAT IT ACTUALLY SHOWS DOWN THERE ON NUMBER THREE IS
13 THAT IN THE LIVECYCLE SYSTEM, ONCE YOU RECEIVE THE KEY FROM
14 THE SERVER, THE CLIENT OR THE USER DISCARDS THE KEY, RIGHT?

15 **A.** I'M NOT FAMILIAR WITH THE CONTEXT OF THIS DOCUMENT.

16 **Q.** THIS WAS A DOCUMENT THAT YOU CITED ON DIRECT EXAMINATION
17 WITH MR. DINOVO.

18 **A.** I DON'T REMEMBER THIS PRECISE LOCATION. I JUST DON'T WANT
19 TO TAKE THIS OUT OF CONTEXT HERE.

20 **Q.** FAIR ENOUGH. IS IT FAIR TO SAY THAT YOU ARE NOT DISPUTING
21 OR DISAGREEING WITH THE NOTION THAT LIVECYCLE DISCARDS THE KEY
22 ONCE IT IS RECEIVED FROM THE SERVER?

23 **A.** I THINK THE SETTING HERE IS THE PERSON WHO CREATES THE
24 DOCUMENT. SO THIS IS NOT TALKING ABOUT ACCESS. THIS IS
25 TALKING ABOUT CREATION, I BELIEVE.

1 Q. IT IS ACTUALLY TALKING ABOUT THERE'S THREE DIFFERENT
2 STEPS, RIGHT? STEP ONE, STEP TWO AND STEP THREE?

3 A. THAT'S RIGHT.

4 Q. WHAT I'M FOCUSED IN ON IS STEP THREE.

5 A. OKAY.

6 Q. YOU SEE WHAT STEP THREE IS IS WHERE THE CLIENT
7 APPLICATION --

8 MS. MEHTA: MR. BONINI, WHY DON'T YOU GO DOWN TO THE
9 BOTTOM OF THE PAGE WHERE IT DESCRIBES THE STEPS. THIS MIGHT
10 BE HELPFUL.

11 BY MS. MEHTA

12 Q. DO YOU HAVE THAT, DR. DEVANBU?

13 A. OKAY.

14 Q. AND IT'S -- THIS IS THE STEPS DESCRIPTION. DO YOU SEE
15 THAT?

16 A. YES.

17 Q. FOR STEP THREE IT SAYS:

18 "THE CLIENT APPLICATION USES THE KEY TO ENCRYPT THE
19 DOCUMENT, DISCARDS THE DOCUMENT KEY, AND EMBEDS THE LICENSE
20 AND POLICY."

21 DO YOU SEE THAT?

22 A. YES.

23 Q. AND YOU UNDERSTAND THAT THAT'S WHEN THE CLIENT IS
24 ATTEMPTING TO ACCESS THE CONTENT?

25 A. NO, IT'S NOT. IT IS WHEN THE CLIENT IS ENCRYPTING THE

1 DOCUMENTS. SEE IT SAYS "ENCRYPT" NOT "DECRYPT."

2 Q. OKAY. LET'S GO TO THE NEXT PAGE, MR. BONINI. PAGE 57.
3 THIS MIGHT CLEAR IT UP.

4 BY MS. MEHTA

5 Q. IF YOU LOOK AT THE TOP PART OF THAT PAGE, IT SAYS:
6 "DOCUMENT ACCESS FOR ONLINE USE."

7 DO YOU SEE THAT?

8 A. YES.

9 Q. NOW, THIS IS TALKING ABOUT DECRYPTING, RIGHT?

10 A. OKAY.

11 Q. ALL RIGHT. NOW, IF YOU GO DOWN TO THAT SAME CHART,
12 MR. BONINI, WHERE IT DESCRIBES THE STEPS.

13 A. RIGHT.

14 Q. THIS DOCUMENT SAYS THAT IN STEP THREE YOU'RE AT THE
15 CLIENT, RIGHT?

16 A. RIGHT.

17 Q. AND YOU'RE DECRYPTING THE INFORMATION THAT'S RECEIVED FROM
18 THE SERVER, RIGHT?

19 A. RIGHT.

20 Q. AND IF YOU GO BACK UP TO THE FIGURE, WHEN YOU ARE
21 DECRYPTING THE INFORMATION THAT IS RECEIVED FROM THE SERVER,
22 YOU ACTUALLY DISCARD THE DOCUMENT KEY, RIGHT?

23 A. CORRECT.

24 Q. NOW, THERE IS SOME DISCUSSION ON YOUR EXAMINATION WITH
25 MR. DINOVO ABOUT ENCRYPTING AND DECRYPTING THE THING THAT YOU

1 POINT TO AS THE PERMISSION OR THE KEY THAT COMES OVER FROM THE
2 SERVER. YOU RECALL THAT?

3 **A.** CORRECT.

4 **Q.** AND I THINK YOU SAID THAT IN THE CONTEXT OF THE ACCUSED
5 PRODUCTS THE KEY IS GENERATED AT THE SERVER, ENCRYPTED,
6 TRANSMITTED AND THEN DECRYPTED?

7 **A.** CORRECT.

8 **Q.** NOW, I WANT YOU TO PUT ASIDE FROM THE MOMENT THE PROCESS
9 OF ENCRYPTION AND DECRYPTION, OKAY? SET THAT ASIDE.

10 **A.** CORRECT.

11 **Q.** BEFORE THE KEY IS ENCRYPTED AT THE SERVER IT IS GENERATED
12 AND EXISTS AT THE SERVER. RIGHT?

13 **A.** CORRECT.

14 **Q.** NOW, LET'S GO OVER TO THE OTHER SIDE TO THE CLIENT. AFTER
15 DECRYPTION, THE KEY THAT'S AT THE CLIENT IS THE SAME KEY THAT
16 EXISTED AT THE SERVER BEFORE ENCRYPTION, CORRECT?

17 **A.** CORRECT.

18 **MS. MEHTA:** NO FURTHER QUESTIONS, YOUR HONOR.

19 **MR. DINOVO:** NOTHING FURTHER, YOUR HONOR.

20 **THE COURT:** ALL RIGHT. YOU ARE EXCUSED. YOU MAY
21 STEP DOWN.

22 YOU MAY CALL YOUR NEXT WITNESS.

23 **MS. MEHTA:** YOUR HONOR, AT THIS POINT DEFENDANTS CALL
24 DR. WICKER OUR --

25 **THE COURT:** THIS IS THE ARRANGEMENT YOU ALL HAVE

1 AGREED TO?

2 **MS. MEHTA:** YES, YOUR HONOR. WE THOUGHT IT WOULD BE
3 HELPFUL FOR THE JURY TO DO IT BACK TO BACK.

4 **THE COURT:** OKAY. SO WHAT WE ARE GOING TO DO NOW,
5 RATHER THAN WAIT UNTIL THE DEFENDANT'S CASE AND HEAR FROM
6 THEIR WITNESS, THEIR EXPERT WITNESS ON THE SAME SUBJECT, WE
7 THOUGHT IT MIGHT BE EASIER FOR YOU IF YOU HEARD OUT OF ORDER
8 THE DEFENDANT'S EXPERT RIGHT NOW.

9 SO THIS WILL BE THE DEFENDANT'S EXPERT CALLED OUT OF ORDER
10 TO TALK ABOUT THE THINGS THAT THE PLAINTIFF'S EXPERT JUST
11 TALKED ABOUT.

12 SO IF YOU WILL STAND AND RAISE YOUR RIGHT HAND, PLEASE.

13 (STEPHEN WICKER, CALLED AS A WITNESS FOR THE DEFENDANT,
14 HAVING BEEN DULY SWORN, TESTIFIED AS FOLLOWS:)

15 **THE WITNESS:** I DO.

16 **THE CLERK:** PLEASE STATE YOUR NAME AND SPELL YOUR
17 FIRST AND LAST NAME FOR THE RECORD, PLEASE.

18 **THE WITNESS:** STEPHEN WICKER, S-T-E-P-H-E-N,
19 W-I-C-K-E-R.

20 **THE CLERK:** THANK YOU.

21 **MS. MEHTA:** YOUR HONOR, BEFORE WE PROCEED WITH
22 MR. WICKER'S TESTIMONY, WOULD IT BE POSSIBLE FOR HIM TO
23 APPROACH THE SCREEN AT TIMES DURING HIS EXAMINATION?

24 **THE COURT:** AS LONG AS HE CAN KEEP HIS VOICE UP AND
25 EVERYONE CAN SEE AND HEAR HIM.

1 **MS. MEHTA:** SURE. BUT WOULD IT BE POSSIBLE FOR HIM
2 TO USE A LAPEL MIC?

3 **THE CLERK:** I CAN SWITCH IT.

4 **THE COURT:** SURE.

5 **MS. MEHTA:** THANK YOU, YOUR HONOR.

6 (PAUSE IN THE PROCEEDINGS.)

7 **DIRECT EXAMINATION**

8 **BY MS. MEHTA:**

9 **Q.** ALL RIGHT.

10 DR. WICKER, ARE YOU SET?

11 **A.** YES, I AM.

12 **Q.** THANK YOU.

13 DR. WICKER, COULD YOU INTRODUCE YOURSELF TO THE JURY,
14 PLEASE?

15 **A.** SURE. MY NAME IS STEVE WICKER.

16 **THE CLERK:** GIVE ME ONE SECOND TO SWITCH, OKAY?

17 **MS. MEHTA:** MR. BONINI, IF YOU CAN PULL UP MR. --
18 DR. WICKER'S DEMONSTRATIVES, PLEASE, FOR THE '541 PATENT.

19 (PUBLISHED TO JURY.)

20 **THE WITNESS:** MY NAME IS STEVE WICKER. I'M A
21 PROFESSOR OF ELECTRICAL AND COMPUTER ENGINEERING AT CORNELL
22 UNIVERSITY.

23 **BY MS. MEHTA:**

24 **Q.** DR. WICKER, COULD YOU TELL US A LITTLE BIT ABOUT YOUR
25 BACKGROUND AND EXPERIENCE?

1 **A.** YES.

2 I STARTED MY WORK LIFE AS AN ENGINEER AT HUGHES AIRCRAFT
3 IN EL SEGUNDO, CALIFORNIA. I WORKED ON COMMUNICATION PAYLOADS
4 FOR SATELLITES. I GOT MY PH.D. IN ELECTRICAL ENGINEERING AT
5 U.S.C. AND THEN SPENT NINE YEARS AS A PROFESSOR OF ELECTRICAL
6 ENGINEERING AT GEORGIA TECH.

7 AND AT THAT POINT CORNELL LET ME KNOW THEY WERE BUILDING A
8 WIRELESS AREA. THEY WERE STARTING TO GET INTO WIRELESS
9 RESEARCH. CELLULAR WAS STARTING TO LOOK ATTRACTIVE, SO I WENT
10 TO CORNELL IN 1996, AND I HAVE BEEN THERE EVER SINCE.

11 **Q.** DR. WICKER, COULD YOU DESCRIBE SOME OF YOUR RESEARCH AT A
12 HIGH LEVEL?

13 **A.** CERTAINLY.

14 OVER THE YEARS MY RESEARCH HAS BEEN IN BOTH WIRE AND
15 WIRELESS COMMUNICATION SYSTEMS.

16 MORE RECENTLY, I'VE FOCUSED ON SECURITY AND PRIVACY AND
17 DIGITAL RIGHTS MANAGEMENT. I AM PARTICULARLY INTERESTED IN
18 CREATING TOOL KITS FOR PRIVACY AND SECURITY THAT INCLUDE
19 CRYPTOGRAPHIC TECHNIQUES.

20 **Q.** DR. WICKER, DO YOU HAVE ANY PUBLICATIONS?

21 **A.** YES, I DO.

22 **Q.** HOW MANY?

23 **A.** I ACTUALLY HAVEN'T COUNTED, BUT APPROXIMATELY 250.

24 **Q.** AND DO YOU HAVE ANY BOOKS THAT YOU HAVE AUTHORED?

25 **A.** YES.

1 Q. HOW MANY?

2 A. SIX.

3 Q. AND PRIOR TO YOUR WORK IN THIS CASE, YOU'VE DONE WORK IN
4 DIGITAL RIGHTS MANAGEMENT TECHNOLOGY?

5 A. THAT'S CORRECT.

6 MS. MEHTA: YOUR HONOR, AT THIS TIME WE WOULD PROFFER
7 DR. WICKER AS AN EXPERT IN THE AREAS OF THE '541 AND '670
8 PATENTS.

9 MR. DINOVO: NO OBJECTION, YOUR HONOR.

10 THE COURT: ALL RIGHT.

11 MS. MEHTA: YOUR HONOR, MAY I ALSO REQUEST
12 DR. WICKER'S DEMONSTRATIVE EXHIBITS BE PUBLISHED TO THE JURY?

13 THE CLERK: THEY WILL BE ONCE I SEE YOU'RE USING
14 THEM.

15 MS. MEHTA: THANK YOU. I'M GOING TO GO TO THE NEXT
16 SLIDE. THANK YOU.

17 BY MS. MEHTA:

18 Q. DR. WICKER, WHAT WAS YOUR ASSIGNMENT IN THIS CASE?

19 A. I WAS ASKED TO -- TO STUDY THE PATENTS AND THE ACCUSED
20 PRODUCTS, AND TO TAKE A LOOK AT DR. DEVANBU'S INFRINGEMENT
21 REPORT, AND DETERMINE WHETHER OR NOT IN MY OPINION HE HAD
22 SHOWN THAT INFRINGEMENT HAD INDEED TAKEN PLACE.

23 Q. AND WHAT ANALYSIS DID YOU UNDERTAKE TO REACH YOUR
24 CONCLUSIONS?

25 A. IN MY ANALYSIS, I STARTED WITH THE PATENTS THEMSELVES. I

1 READ THE WRITTEN DESCRIPTION -- WRITTEN DESCRIPTIONS, THE BODY
2 OF THE PATENTS, AND I READ THE CLAIMS THAT HAD BEEN ASSERTED.

3 I THEN LOOKED TO THE FILE HISTORIES, THE BACK AND FORTH
4 BETWEEN THE INVENTOR AND THE PATENT OFFICE.

5 I ALSO LOOKED AT THE COURT'S CLAIM CONSTRUCTION.

6 AND THAT COMBINATION OF THINGS TOLD ME WHAT A PERSON OF
7 SKILL IN THE ART WOULD HAVE THOUGHT THE CLAIMS ACTUALLY MEANT.

8 I THEN LOOKED AT DEPOSITION TRANSCRIPTS, INTERROGATORY
9 RESPONSES TO DETERMINE HOW THE ACCUSED PRODUCTS WORKED.

10 I ALSO LOOKED AT DR. DEVANBU'S REPORT AND LOOKED AT HOW HE
11 HAD ANALYZED THINGS. THERE'S ALSO A REPORT BY DR. KELLER ON
12 VALIDITY, AND THAT'S A SEPARATE SUBJECT.

13 I LOOKED AT SOME SOURCE CODE, SPECIFICALLY THAT THAT HAD
14 BEEN REFERENCED IN DR. DEVANBU'S REPORT. I LOOKED AT A LARGE
15 NUMBER OF ADOBE TECHNICAL DOCUMENTS. THERE WAS QUITE A BIT
16 FOCUSING ON THE THREE ACCUSED PRODUCTS.

17 AND THEN FINALLY I WAS ABLE TO TALK TO ADOBE ENGINEERS. I
18 WAS ABLE TO TALK TO THE FOLKS WHO WROTE THE CODE AND DEVELOP
19 THESE PRODUCTS AND ASK THEM SPECIFIC QUESTIONS.

20 Q. DR. WICKER, ARE YOU BEING COMPENSATED FOR YOUR WORK IN
21 THIS CASE?

22 A. YES.

23 Q. WHAT'S YOUR HOURLY RATE?

24 A. \$600.

25 Q. NOW, I WANT TO FOCUS IN ON THE ANALYSIS THAT YOU CONDUCTED

1 AND THE CONCLUSIONS THAT YOU REACHED WITH RESPECT TO THE '541
2 PATENT FIRST.

3 ON THE '541 PATENT, DID YOU AGREE OR DISAGREE WITH
4 DR. DEVANBU'S CONCLUSION AS TO INFRINGEMENT BY THE ADOBE
5 ACCUSED PROPERTIES?

6 **A.** I DISAGREED WITH DR. DEVANBU.

7 **Q.** COULD YOU EXPLAIN -- WELL, WHY DON'T WE START WITH AN
8 EXPLANATION OF THE PATENT, AND THEN YOU CAN GET INTO WHY.

9 SO IF YOU COULD PERHAPS GIVE US AN OVERVIEW OF THE '541
10 PATENT.

11 (PUBLISHED TO JURY.)

12 **A.** THE '541 PATENT PROVIDES A TECHNIQUE FOR REGULATING ACCESS
13 TO DIGITAL CONTENT. THAT'S WHAT IT SAYS IN THE TITLE OF THE
14 PATENT.

15 AND YOU GO TO THE ABSTRACT, IT PROVIDES MORE DETAIL. IT
16 SAYS: "THE CONTENT IS INACCESSIBLE TO A USER UNTIL A PAYMENT
17 OR USE AUTHORIZATION OCCURS."

18 AND BEYOND THAT, THE PATENT CALLS FOR A VERY SPECIFIC WAY
19 OF DOING THIS, A PARTICULAR TECHNIQUE OR SET OF TECHNIQUES IN
20 DRM.

21 **Q.** NOW, IF YOU COULD, WHY DON'T WE FOCUS IN ON THE CLAIMS.

22 I AM GOING TO POINT YOU TO CLAIM 1 OF THE '541. AND IF
23 YOU COULD WALK US THROUGH YOUR UNDERSTANDING OF THE CLAIM
24 AND -- AND HOW IT FITS INTO THE PICTURE OF THIS CASE.

25 **A.** OKAY. THIS IS CLAIM 1 FOR THE '541, THE ENTIRE CLAIM.

1 AND I'VE GOT -- IN FACT, THIS MIGHT BE A GOOD POINT, IF I
2 MAY, TO POINT TO A FEW THINGS ON THE SCREEN.

3 **MS. MEHTA:** YOUR HONOR, WOULD THAT BE OKAY?

4 **THE COURT:** YES.

5 **MS. MEHTA:** THANK YOU, DR. WICKER.

6 (PUBLISHED TO JURY.)

7 **THE WITNESS:** I'LL TRY NOT TO TRIP OVER THE WIRES.

8 SO THIS IS CLAIM 1 OF THE '541 PATENT. WHAT I'VE DONE IS
9 NUMBERED THE INDIVIDUAL PARAGRAPHS OR ELEMENTS, AS THEY ARE
10 CALLED, FOR THE PARTICULAR CLAIM.

11 IF WE FOCUS ON CLAIM 1 ON THE NEXT SLIDE -- EXCUSE ME,
12 LIMITATION ONE, WHAT IT CALLS FOR IS A COMPUTER IMPLEMENTED
13 METHOD OF REGULATING ACCESS TO DIGITAL CONTENT.

14 THEN IT SAYS IT'S GOING TO BE A METHOD. AND THAT METHOD
15 WILL HAVE A NUMBER OF STEPS. SO WE KNOW RIGHT UP FRONT IT
16 INVOLVES REGULATING ACCESS TO DIGITAL CONTENT. AND THE
17 SPECIFICATION SHOWS SOME PICTURES, AND I'VE GOT SOME OF THAT
18 DIGITAL CONTENT THERE.

19 NEXT PLEASE.

20 (PUBLISHED TO JURY.)

21 SO THE NEXT STEP IS AT A CLIENT. AND THEN IT GOES ON. I
22 WANT TO EMPHASIZE -- I'VE HIGHLIGHTED THIS IN RED. WHAT IT'S
23 SAYING IS, WE'VE GOT A STEP HERE, AND IT'S GOING TO BE DONE AT
24 THE CLIENT, WHICH, OF COURSE, IS THE TERMINAL, YOUR LAPTOP,
25 WHATEVER IT IS YOU'RE USING TO ACCESS A SERVER.

1 SO GOING ON, "AT A CLIENT, EXECUTING AN ACCESS CHECKING
2 PROCESS TO DETERMINE WHETHER THE CLIENT HOLDS A PRE-EXISTING
3 PERMISSION FOR A RESOURCE TO ACCESS THE DIGITAL CONTENT".

4 SO IT'S GOING TO LOOK LOCALLY AT THE CLIENT TO DETERMINE
5 WHETHER OR NOT IT ALREADY HAS ACCESS TO LOOK AT THIS
6 PARTICULAR CONTENT. DO WE HAVE AN EXISTING PERMISSION? OKAY.

7 (PUBLISHED TO JURY.)

8 THE NEXT STEP BEGINS WITH, "IF NOT". SO NOW WE HAVE TWO
9 STEPS. YOU SAY, WE CHECK SOMETHING AND THEN IF NOT, WE ARE
10 GOING TO DO SOMETHING ELSE. SO IT'S STANDARD COMPUTER SCIENCE
11 SORT OF THING -- STEP IN MANY PROGRAM LANGUAGES.

12 OKAY. SO WE CHECKED IF NOT, WE ARE GOING TO REQUEST
13 PERMISSION FROM AN EXTERNAL SOURCE FOR THE RESOURCE TO ACCESS
14 THE DIGITAL CONTENT.

15 SO WE DIDN'T HAVE THE LOCAL PERMISSION, SO WHAT WE ARE
16 GOING TO DO IS SEND -- THAT WENT PRETTY QUICKLY -- ANYWAY, THE
17 MONEY WENT FROM THE COMPUTER ACROSS THE INTERNET OR THE
18 NETWORK, WHATEVER IT MAY BE, TO A SERVER. OKAY? SO IF
19 REQUESTED PERMISSION IN THIS CASE BY SENDING MONEY.

20 (PUBLISHED TO JURY.)

21 THE NEXT STEP, STEP 4, RECEIVING FROM THE EXTERNAL SOURCE
22 A TOKEN.

23 SO THE SERVER GOT THE MONEY. AND SO HERE WE SEE THE TOKEN
24 COMING ACROSS. AGAIN, IT INDICATES APPROVAL OR REJECTION. IN
25 THIS CASE, IT'S APPROVAL. WE GOT A YES IN OUR TOKEN WHICH

1 SAYS THAT -- CONTINUING ON --

2 (PUBLISHED TO JURY.)

3 -- STEP 5 -- OH, I'M SORRY. LET ME SAY A LITTLE BIT MORE
4 ABOUT THE TOKEN.

5 THE COURT HAS A CLAIM CONSTRUCTION, AND THIS IS ONE OF THE
6 TERMS IN THE CLAIM THAT THE COURT TOLD ME AND OTHERS MEANT.

7 OKAY. SO IN THIS CASE, THE TOKEN IS A FILE INDICATING
8 WHETHER THE TRANSACTION HAS BEEN APPROVED AND ACCESS SHOULD BE
9 GRANTED.

10 AND THIS IS THE WAY THE PATENT DESCRIBES IT. IT SAYS, "A
11 TOKEN, FOR EXAMPLE, IS A FIRST BIT THAT SIGNIFIES ACCEPTANCE
12 OR REJECTION". SO IT'S BINARY, YES NO.

13 **MR. DINOVO:** JUST A MOMENT.

14 YOUR HONOR, COULD WE ASK QUESTIONS HERE AS OPPOSED TO A
15 PURE NARRATIVE?

16 **MS. MEHTA:** I WAS JUST GOING TO ASK HIM ABOUT THE
17 NEXT LIMITATION.

18 **MR. DINOVO:** THANK YOU.

19 **BY MS. MEHTA:**

20 **Q.** NOW, IF WE CAN TURN TO THE NEXT LIMITATION, WHICH IS THE
21 BASED ON LIMITATION.

22 **A.** OKAY.

23 THIS IS NOW THE FIFTH LIMITATION FROM THE CLAIM. AND IT
24 SAYS, BASED ON THAT RECEIVED TOKEN, IN THIS CASE IT WAS A YES
25 THAT CAME FROM THE SERVER, EXECUTING AN INSTALLATION PROCESS

1 THAT GENERATES AT THE CLIENT A PERMISSION THAT IS LOCKED
2 UNIQUELY TO THE CLIENT.

3 SO TWO PIECES HERE. IT'S BEING DONE AT THE CLIENT AND,
4 FOR EXAMPLE, IT'S GOING TO USE A MACHINE I.D. TO LOCK THAT
5 PERMISSION TO THE CLIENT. OKAY?

6 SO WHAT WE JUST SAW WAS THE GEARS TURNING AND THE TOKEN
7 CAUSED THIS PROCESS TO GENERATE A KEY THAT WE CAN NOW USE TO
8 ACCESS THE DOCUMENT.

9 AND THE FINAL PIECE TO THIS LAST STEP IS, THAT MAY BE
10 FOUND BY A LATER EXECUTION OF THE ACCESS CHECKING PROCESS.
11 SO, WE GOT PERMISSION, WE GENERATED THE PERMISSION LOCALLY
12 AFTER WE GOT THE TOKEN, AND NOW THAT PERMISSION IS STORED SO
13 THAT THE NEXT TIME AROUND WHEN SOMEONE TRIES TO ACCESS THIS
14 MATERIAL, WE'LL HAVE PERMISSION. SO IT'S LIKE THAT ORIGINAL
15 STEP WE SAW AT THE BEGINNING OF THE CLAIM.

16 THE NEXT TIME WE LOOK, WE'LL HAVE PERMISSION AND WE WON'T
17 DO THESE OTHER THINGS.

18 **Q.** DR. WICKER, COULD YOU DESCRIBE WHETHER OR NOT THE "AT THE
19 CLIENT" REQUIREMENT THAT YOU'VE IDENTIFIED HAS ANY PARTICULAR
20 SIGNIFICANCE IN THE CONTEXT OF THE '541 PATENT IN YOUR VIEW?

21 **A.** YES.

22 THIS "AT THE CLIENT" LANGUAGE WAS EMPHASIZED IN A NUMBER
23 OF DIFFERENT PLACES. IN FACT, IT'S WHAT DIGITAL REG USED TO
24 DISTINGUISH WHAT THEY WERE CLAIMING IS THEIR INVENTION FROM
25 SOME DRM THAT WAS IN THE PRIOR ART. I THINK THIS HAS BEEN

1 ALREADY MENTIONED ONCE EARLIER THIS WEEK.

2 THERE WAS A PATENT TO WOLFE THAT ALSO HAD SOME DRM, AND IT
3 WAS PRIOR ART. AND WHAT THE PATENTEE, THE APPLICANT, SAID WAS
4 THAT WE DON'T DO IT LIKE WOLFE. AMENDED CLAIM 1 MAKES CLEAR
5 THAT IT IS AT THE CLIENT THAT THE INSTALLATION PROCESS
6 GENERATES THE PERMISSION KEY.

7 IN WOLFE, IT IS AT THE CENTRAL COMPUTER. IT IS THE
8 CENTRAL COMPUTER, EXCUSE ME, THAT GENERATES THE MACHINE
9 DEPENDENT PERMISSION CODE. SO WOLFE DID IT AT THE SERVER.
10 WHAT WE ARE DOING -- WHAT DIGITAL REG SAID THEY WERE DOING WAS
11 DOING IT AT THE CLIENT. THAT'S WHY THAT LANGUAGE WAS
12 IMPORTANT TO ME.

13 **Q.** NOW, IF YOU WILL, COULD YOU ALSO DESCRIBE WHETHER THERE'S
14 BEEN ANY OTHER EXPERT ANALYSIS IN THE CASE THAT RELATES TO
15 THIS "AT THE CLIENT" REQUIREMENT?

16 **A.** YES.

17 DR. KELLER, AGAIN, IS THE VALIDITY EXPERT THAT DIGITAL REG
18 HIRED. AND WHEN HE WAS ASKED THE QUESTION: WHATEVER IT IS
19 THAT ONE WOULD POINT TO BE THAT PERMISSION HAS TO HAVE BEEN
20 CREATED AT THE CLIENT.

21 CORRECT, IT HAS TO BE GENERATED AT THE CLIENT.

22 SO HE AGREED WITH ME THAT THAT WAS IMPORTANT AS WELL.

23 **Q.** IS THERE A REASON WHY IT WOULD BE IMPORTANT TO GENERATE
24 THE PERMISSION LOCALLY AT THE CLIENT AS OPPOSED TO PASSING IT
25 FROM THE SERVER?

1 **A.** YES. ARGUABLY IT'S IMPORTANT BECAUSE -- WELL, BASICALLY
2 HERE'S WHAT DR. KELLER SAID WITH REGARD TO HIJACKING.

3 AND THAT'S BEEN MENTIONED A TIME OR TWO EARLIER TODAY,
4 THIS IDEA THAT BY GENERATING AT THE CLIENT WE PREVENT
5 HIJACKING.

6 AND WHAT DR. KELLER SAID WAS, PASSING THE PASSWORD
7 RATHER THAN A TOKEN USED TO GENERATE A PERMISSION, EXPOSES THE
8 PASSWORD TO HIJACKING AND POTENTIAL MISUSE.

9 SO IT'S THIS BASIC IDEA THAT, YOU KNOW, IF WE GENERATE IT
10 LOCALLY AND NEVER SEND IT OUT, NO ONE CAN INTERCEPT IT.

11 **Q.** DR. WICKER, WE KIND OF WENT THROUGH THE STEPS OF THE CLAIM
12 THERE. IF YOU COULD, COULD WE DESCRIBE -- QUICKLY RUN THROUGH
13 THE ANIMATION THAT YOU PREPARED AND TAKE US THROUGH THE STEP,
14 ALL OF THE CLAIMS AND HOW THEY FIT TOGETHER? HOW ALL THE
15 STEPS OF THE CLAIM FIT TOGETHER?

16 (PUBLISHED TO JURY.)

17 **A.** OKAY.

18 SO THIS IS THE ANIMATION. AGAIN, WE HAVE GOT A CLIENT
19 COMPUTER AND WE'RE GOING TO ATTEMPT TO ACCESS THAT CONTENT.
20 WE LOOK TO SEE IF WE HAVE PERMISSION LOCALLY.

21 WE DON'T, SO HAVING FAILED, WE THEN SEND, IN THIS CASE
22 SOME MONEY, SEND A REQUEST TO THE SERVER. THE SERVER WILL
23 RECEIVE OUR MONEY AND THEN SEND THE TOKEN IN RETURN. IN THIS
24 CASE THE TOKEN SAYS YES.

25 THE TOKEN THEN TELLS THE COMPUTER THAT IT CAN GENERATE

1 LOCALLY THE PERMISSION. AND WE'LL SEE SOME GEARS COME UP THAT
2 SHOW THIS GENERATION PROCESS. AND THAT GENERATION IS TIED TO
3 THE MACHINE, SO WE USE THE MACHINE I.D. TO GENERATE THE KEY
4 AND THE KEY CAN NOW BE USED TO ACCESS THE CONTENT.

5 AND, FINALLY, NOW THAT IT'S OPEN, WE ARE GOING TO STORE
6 THE KEY SO NEXT TIME WE'LL KNOW -- WE WILL BE ABLE TO ACCESS
7 THE CONTENT WITHOUT GOING THROUGH THOSE STEPS.

8 **Q.** NOW, DR. WICKER, DID YOU ANALYZE THE ADOBE ACCUSED
9 PRODUCTS WITH RESPECT TO THE INFRINGEMENT ALLEGATION ON
10 CLAIM 1 OF THE '541 PATENT?

11 **A.** YES, I DID.

12 **Q.** I'M GOING TO HAVE YOU STEP THROUGH THE PRODUCTS. AND
13 LET'S START WITH THE SOFTWARE ACTIVATION OR ALM PRODUCT.

14 **A.** OKAY.

15 SO, AGAIN, THIS IS THE ALM PRODUCT, ALSO REFERRED TO AS
16 SOFTWARE ACTIVATION. A FEW QUICK FACTS THAT I DISCOVERED.

17 IT WAS RELEASED IN NOVEMBER 2006 BUT DISCONTINUED JUST TWO
18 AND A HALF MONTHS LATER. SO THIS PRODUCT WAS NOT AROUND FOR A
19 LONG TIME. IT WAS DISCONTINUED BECAUSE OF INEFFECTIVENESS AND
20 CUSTOMER COMPLAINTS.

21 WHAT THEY WERE TRYING TO DO WAS CONTROL THE NUMBER OF
22 LICENSES THAT A GIVEN GROUP COULD USE. LIKE A COMPANY WOULD
23 GET A WHOLE BUNCH OF LICENSES. IT DIDN'T WORK VERY WELL.
24 PEOPLE WOULD BE DENIED ACCESS WHEN THEY SHOULD HAVE BEEN GIVEN
25 ACCESS.

1 Q. NOW, DR. WICKER, WAS THE DRM COMPONENT FOR ALM HOMEGROWN
2 AT ADOBE OR WAS THAT SOMEONE ELSE'S TECHNOLOGY?

3 A. NO, IT WAS SOMEONE ELSE'S. IN FACT, I THINK THERE WAS
4 JUST A REFERENCE TO THIS IN THE LAST HOUR.

5 THIS DRM COMPONENT WAS LICENSED FROM A COMPANY CALLED
6 MACROVISION. SO ADOBE WENT TO A THIRD PARTY TO GET THIS AND
7 LICENSE IT. SO WE CAN SEE ALM IS BASED ON MACROVISION'S
8 FLEXNET ELECTRONIC LICENSING TECHNOLOGY.

9 Q. DR. WICKER, I'M GOING TO ASK YOU NOW TO DESCRIBE FOR US
10 HOW THE ACCUSED ALM DRM COMPONENT WORKS IN THE VOLUME
11 LICENSING CONTEXT.

12 (PUBLISHED TO JURY.)

13 A. OKAY. LET'S START WITH A COMPUTER. IN FACT, WE HAVE AN
14 ADOBE PRODUCT HERE ON THE SCREEN.

15 SO LET'S GO AHEAD AND GET STARTED.

16 WHEN WE TRY AND ACCESS THE SOFTWARE, THE DRM ON THIS
17 MACHINE IS GOING TO COLLECT THE MACHINE I.D. AND A SERIAL I.D.
18 THESE ARE THE TWO PIECES THAT IT'S GOING TO SEND TO THE
19 SERVER.

20 SO IF WE CAN CLICK AGAIN.

21 THIS INFORMATION, MACHINE I.D. AND SERIAL I.D. IS SENT OUT
22 OVER THE NETWORK TO THE SERVER.

23 NOW THE SERVER IS GOING TO USE THIS INFORMATION TO
24 GENERATE THE PERMISSION, TO GENERATE, AMONG OTHER THINGS, A
25 KEY. SO WE WILL SEE THAT MACHINE I.D. AND THE SERVER --

1 SERIAL I.D., EXCUSE ME, BEING PROCESSED TO CREATE, AMONG OTHER
2 THINGS, A KEY. OKAY? THAT'S THE KEY THAT WILL ALLOW US TO
3 ACCESS THE SOFTWARE.

4 Q. THEN WHAT HAPPENS WITH THAT KEY?

5 A. THAT KEY IS GOING TO BE ENCRYPTED AND IT'S GOING TO BE
6 SENT BACK ACROSS THE NETWORK. AT THE CLIENT COMPUTER, THE KEY
7 WILL THEN BE USED TO ACCESS THE SOFTWARE.

8 Q. AND IF YOU CAN DESCRIBE HOW THAT WORKS.

9 A. OKAY.

10 SO THIS KEY IS NOW LOCKED TO THIS MACHINE. SO THE SYSTEM
11 WILL CHECK TO MAKE SURE THAT THIS IS THE MACHINE FOR WHICH
12 THIS KEY WAS DESIGNED. AND IF IT WAS, INDEED, THE RIGHT
13 MACHINE, IS THIS KEY VALID FOR THIS COMPUTER. IF SO, ACCESS
14 IS GRANTED, AND YOU CAN USE THE SOFTWARE.

15 Q. NOW, DR. WICKER, IN YOUR ANALYSIS, DID YOU CONSIDER
16 WHETHER OR NOT ALM HAS DIFFERENT CONFIGURATIONS?

17 A. IT ACTUALLY HAS A LARGE NUMBER OF CONFIGURATIONS. AND,
18 AGAIN, THIS IS SOMETHING THAT'S BEEN ALLUDED TO EARLIER TODAY.

19 THERE'S A LOT OF THEM. I'M GOING TO EMPHASIZE TWO OR
20 THREE.

21 FIRST OFF, THERE ARE CONFIGURATIONS THAT NEED ACCESS TO
22 THE INTERNET. THESE TWO AND THAT ONE, BUT THERE ARE SOME THAT
23 DON'T. SO YOU CAN HOST THIS IN-HOUSE IN WHICH CASE YOU DON'T
24 NEED ACCESS TO THE INTERNET.

25 INCLUDE OR EXCLUDE, THE MACHINE NAME TRACKING. SO IN SOME

1 CASES WE DO BIND THE KEY TO THE MACHINE AND IN SOME CASES WE
2 DON'T. IT'S AN OPTION.

3 AND THEN FINALLY WE CAN USE E-LICENSE FILTERS TO CONTROL
4 WHICH USERS MAY DOWNLOAD. DO THAT LOCALLY, IT'S A LOCAL FORM
5 OF CONTROL.

6 Q. DR. WICKER, DID YOU AGREE OR DISAGREE WITH DR. DEVANBU'S
7 CONCLUSION THAT ALM INFRINGES CLAIM 1 OF THE '541 PATENT?

8 A. I DISAGREE.

9 Q. WHY DON'T YOU FOCUS IN ON WHAT ASPECTS OF THE CLAIM -- ON
10 WHICH ASPECTS OF THE CLAIM YOU HAVE A DISAGREEMENT WITH
11 DR. DEVANBU.

12 A. OKAY. LET'S START WITH -- REMEMBER, AGAIN, THERE ARE A
13 NUMBER OF STEPS. I'M USING THE SAME NUMBERS, OF COURSE.

14 I WOULD LIKE TO FOCUS, BECAUSE OF THE ORDER IN WHICH
15 THINGS HAPPEN, ON THIS FOURTH STEP, RECEIVING FROM THE
16 EXTERNAL SOURCE A TOKEN.

17 IF WE CAN GO TO THE NEXT SLIDE.

18 (PUBLISHED TO JURY.)

19 REMEMBER THAT THE ACCUSED PRODUCT TAKES A MACHINE I.D. AND
20 A SERIAL I.D. TO GENERATE A KEY. AND THIS IS DONE AT THE
21 SERVER. I SHOULD HAVE HIGHLIGHTED THAT. ANYWAY, IT'S DONE AT
22 THE SERVER.

23 NOW THIS IS WHAT'S ACCUSED OF BEING A TOKEN, BUT IT'S NOT.
24 IT CAN'T BE A TOKEN. BECAUSE WHAT IT IS IS A FULLY DEVELOPED
25 MACHINE LOCKED LICENSE. IT'S NOT SOMETHING THAT APPROVES OR

1 REJECTS, IT'S THE LICENSE ITSELF. NOW --

2 Q. DR. WICKER, WERE YOU IN THE COURTROOM YESTERDAY FOR
3 DR. DEVANBU'S TESTIMONY?

4 A. YES, I WAS.

5 Q. AND DID YOU HEAR HIS TESTIMONY REGARDING THE TOKEN AND THE
6 YES NO LIMITATION?

7 A. YES, I DID.

8 Q. AND WHAT WAS -- WHAT DID YOU THINK IN TERMS OF WHETHER YOU
9 AND DR. DEVANBU AGREE OR DISAGREE ON THAT? DO YOU AGREE OR
10 DISAGREE WITH HIM?

11 A. WELL, I AGREE WITH HIM TO THE EXTENT HE SAYING WE HAVE A
12 FULLY DEVELOPED MACHINE LOCKED LICENSE AND NOT AN INDICATION
13 OF YES OR NO.

14 Q. FROM HIS TESTIMONY YESTERDAY, DID YOU UNDERSTAND THAT HE
15 IS OR IS NOT AGREEING THAT YOU HAVE A TOKEN WITHIN THE CONTEXT
16 OF THE CLAIM CONSTRUCTION -- LET ME REPHRASE THAT TO BE A
17 LITTLE BIT MORE CLEAR.

18 FROM THE TESTIMONY YESTERDAY, IS THERE AN AGREEMENT OR
19 DISAGREEMENT BETWEEN YOU AND DR. DEVANBU AS TO WHETHER OR NOT
20 WHAT'S SENT FROM THE SERVER TO THE CLIENT HAS A YES NO?

21 A. SO WE AGREE THAT WHAT'S SENT IS A FULLY DEVELOPED MACHINE
22 LOCKED LICENSE. WE DISAGREE ABOUT WHETHER IT'S A TOKEN. I
23 DON'T THINK IT CAN BE A TOKEN BECAUSE WE'VE ALREADY GOT THE
24 LICENSE. THERE IS NO APPROVAL OR REJECTION AND A LATER
25 CREATION OF THE PERMISSION. THIS IS THE PERMISSION.

1 Q. DID YOU HEAR DR. DEVANBU PROVIDE ANY TESTIMONY AS TO
2 WHETHER OR NOT THERE WAS A YES NO IN THE LICENSE THAT'S SENT
3 FROM THE SERVER TO THE CLIENT?

4 A. NO.

5 Q. NOW LET'S TALK ABOUT THE NEXT LIMITATION. AND IF YOU
6 COULD PROVIDE YOUR OPINION AS TO WHETHER OR NOT THERE IS --
7 THIS LAST LIMITATION IS PRACTICED BY THE ALM PRODUCTS.

8 A. OKAY. THERE'S A LOT IN THIS LIMITATION, SO I TRIED TO
9 HIGHLIGHT WHAT I WAS GOING TO FOCUS ON.

10 WE ARE EXECUTING AN INSTALLATION PROCESS AT THE CLIENT
11 THAT GENERATES A PERMISSION. SO THAT'S WHAT I FOCUSED ON IN
12 THIS NEXT PIECE.

13 SO, GOING BACK TO WHAT I SHOWED BEFORE, WE'VE GOT A SERIAL
14 I.D. AND A MACHINE I.D. AT THE SERVER THAT ARE USED TO
15 GENERATE THAT COMPLETE PERMISSION, THAT COMPLETE VOUCHER. AND
16 THAT'S WHAT WE SEE HERE. IT RESULTS IN, AMONG OTHER THINGS,
17 THE KEY.

18 AND SO THAT'S THE KEY THAT WE'RE GOING TO BE USING TO
19 ACCESS THE SOFTWARE. AND IT'S BEING GENERATED NOT AT THE
20 CLIENT, BUT AT THE SERVER.

21 Q. DR. WICKER, DID YOU FIND ANY DOCUMENTARY EVIDENCE TO
22 SUPPORT YOUR ANALYSIS OF WHERE THE KEY IS GENERATED IN THE ALM
23 PRODUCTS?

24 A. YES.

25 SO ON THE NEXT SLIDE, I WOULD LIKE TO POINT TO AN ALM

1 WHITE PAPER. I THINK IT'S PLAINTIFF'S EXHIBIT 16, IF I'M
2 READING THAT CORRECTLY.

3 (PUBLISHED TO JURY.)

4 THIS SAYS WHAT ACTUALLY I JUST SAID. IT SAYS: "THE ADOBE
5 LICENSE SERVER OR THE ALM BACK-END SERVICE SENDS THE REQUESTER
6 AN E-LICENSE."

7 THE E-LICENSE, THE PERMISSION, COMES FROM THE SERVER.

8 Q. AND YOU HEARD DR. DEVANBU'S TESTIMONY EARLIER TODAY ON
9 THIS ISSUE, RIGHT?

10 A. YES, I DID.

11 Q. AND ARE YOU IN AGREEMENT ON THAT POINT?

12 A. WITH REGARD TO WHERE THE LICENSE COMES FROM, YES.

13 THE PERMISSION THAT IS INFORMATION THAT IS PASSED FROM THE
14 SERVER, YES. HE AGREED WITH THAT. AND, AGAIN, THE PERMISSION
15 COMES FROM THE SERVER. YES, I DO AGREE WITH THAT.

16 Q. NOW, WE TALKED A LITTLE BIT ABOUT THE CONCEPT OF
17 GENERATING THIS PERMISSION LOCALLY AT THE CLIENT AND THE
18 SERVER. IS THAT AN IMPORTANT COMPONENT OF THE '541 CLAIM 1 IN
19 YOUR OPINION?

20 A. YES.

21 Q. AND WHY IS THAT?

22 A. WELL, IT'S OBVIOUSLY -- IT'S BEEN DISCUSSED QUITE A BIT SO
23 FAR IN COURT.

24 I WOULD LIKE TO POINT OUT THAT, FOR EXAMPLE, DR. KELLER
25 POINTS OUT IN HIS EXPERT REPORT THAT BY GENERATING AT THE

1 CLIENT INSTEAD OF THE SERVER, WE CAN AVOID HIJACKING AND
2 MISUSE.

3 AND I THINK THAT'S SOMETHING THAT WAS MENTIONED EARLIER
4 TODAY. IF WE DO IT AT THE CLIENT, IT CAN'T BE INTERCEPTED.

5 Q. NOW, ADOBE'S PRODUCTS, AS YOU JUST TESTIFIED, GENERATE THE
6 KEY AT THE SERVER AND THEN PASS IT OVER THE INTERNET. WHY
7 AREN'T ADOBE'S PRODUCTS SUBJECT TO THE SAME HIJACKING CONCERN?

8 A. WELL, ADOBE CAME UP WITH A DIFFERENT SOLUTION. RATHER
9 THAN SENDING JUST A TOKEN, WHOSE INTERCEPTION WOULD BE
10 MEANINGLESS, ADOBE SENDS THE FULL LICENSE, THE FULL PERMISSION
11 BUT ENCRYPTS IT.

12 SO NOW IF THAT LICENSE IS HIJACKED, EVERYTHING'S THERE BUT
13 IT'S USELESS BECAUSE IT IS LOCKED. IT HAS BEEN ENCRYPTED AND
14 THE PEOPLE WHO HIJACKED IT DON'T HAVE THE KEY, THEREFORE, THEY
15 CAN'T GET AT IT.

16 Q. NOW, ONE THING I JUST WANT TO CLARIFY BECAUSE OF THIS
17 ENCRYPTION PROCESS.

18 THE KEY GENERATED AT THE SERVER PRIOR TO ENCRYPTION, IS IT
19 THE SAME OR DIFFERENT FROM THE KEY THAT IS STORED AT THE
20 CLIENT AFTER DECRYPTION?

21 A. OKAY. THERE HAS BEEN A LOT OF KEYS DISCUSSED. THERE'S
22 ACTUALLY A HIERARCHY OF KEYS DOING DIFFERENT THINGS.

23 THE KEY I'M TALKING ABOUT HERE, THE KEY THAT WILL GIVE US
24 ACCESS TO THIS ADOBE PRODUCT IS THE EXACT SAME KEY THAT'S
25 GENERATED OVER HERE AT THE SERVER. WE ENCRYPT IT, WE DO OTHER

1 THINGS WITH IT, BUT THE KEY THAT'S GENERATED HERE IS THE EXACT
2 SAME KEY THAT'S USED TO OPEN UP THIS SOFTWARE AND ALLOW YOU TO
3 USE IT.

4 **Q.** IS IT -- LET ME ASK THE QUESTION THIS WAY.

5 IS THE PROCESS OF AN ENCRYPTING AND DECRYPTING DATA, DOES
6 THAT CHANGE OR REGENERATE THE DATA IN ANY WAY?

7 **A.** NO. NO. THAT'S JUST SIMPLE PROCESSING.

8 BASICALLY WHAT'S HAPPENING IS, WE HAVE A KEY HERE AND WE
9 WANT TO PROTECT IT. SO AS PART OF THE COMMUNICATION PROCESS
10 WE'RE GOING TO ENCRYPT IT. WHEN IT GETS OVER ON THE OTHER END
11 OF THE NETWORK, WE DECRYPT IT.

12 THERE'S ALL KINDS OF PROCESSING THAT HAPPENS WHEN WE
13 COMMUNICATE OVER THE INTERNET. YOU KNOW, THERE'S TCPIP
14 PROTOCOLS AND WHATNOT, BUT WHAT STARTS HERE AS THE KEY, IS THE
15 SAME KEY THAT ENDS UP HERE. THE KEY THAT'S GENERATED AT THE
16 SERVER IS THE KEY THAT UNLOCKS THE SOFTWARE.

17 **Q.** THANK YOU, DR. WICKER.

18 IF YOU COULD MAYBE JUST SUMMARIZE YOUR OPINIONS WITH
19 RESPECT TO CLAIM 1 FOR ALM.

20 **A.** OKAY. SO WHAT I HAVE SHOWN IS THERE IS NO TOKEN THAT'S
21 CALLED FOR IN THE CLAIM AND THERE'S NO GENERATION OF THE
22 PERMISSION AT THE CLIENT.

23 SO WE X OUT THESE LAST TWO LIMITATIONS. AND I'VE BEEN
24 INSTRUCTED THAT YOU HAVE TO ACTUALLY SATISFY EVERYTHING TO
25 INFRINGE. SO IT'S A METHOD CLAIM. YOU HAVE TO PRACTICE ALL

1 THE STEPS IN ORDER TO INFRINGE THE CLAIM.

2 WELL, ADOBE'S ALM PRODUCTS DON'T PRACTICE 4 AND 5, AT
3 LEAST.

4 Q. DID YOU ALSO CONSIDER THE DEPENDENT CLAIMS OF THE '541
5 PATENT THAT ARE ASSERTED IN THE CASE?

6 A. YES.

7 Q. WHAT WAS YOUR CONCLUSION WITH RESPECT TO THOSE CLAIMS?

8 A. THESE DEPENDENT CLAIMS 2, 4 AND 13 INCLUDE CLAIM 1. THEY
9 HAVE SOME LANGUAGE THAT SAYS "A METHOD INCLUDING CLAIM 1", ET
10 CETERA.

11 WELL, THAT MEANS YOU HAVE TO SATISFY CLAIM 1 AS WELL AS
12 WHATEVER ADDITIONAL STEPS ARE ADDED BY 2, 4 AND 13. SO IF YOU
13 DON'T SATISFY CLAIM 1 YOU CAN'T SATISFY 2, 4 AND 13. THAT'S
14 REALLY MY BASIS FOR SAYING ALM CAN'T INFRINGE 2, 4 AND 13.

15 Q. THANK YOU, DR. WICKER.

16 LET'S TURN TO THE FLASH ACCESS PRODUCT FOR CLAIM 1 OF THE
17 '541 PATENT.

18 A. OKAY.

19 Q. SO IF YOU CAN GIVE US JUST QUICK BACKGROUND ON FLASH AND
20 THEN WE'LL MOVE TO THE CLAIM LIMITATIONS.

21 A. OKAY. WELL, FLASH, LITTLE MORE FAMILIAR -- IT'S STILL
22 AROUND. DEVELOPMENT STARTED IN 2006 AND EARLY 2007, AND THE
23 FIRST FLASH PRODUCTS -- FIRST FLASH ACCESS WAS RELEASED IN
24 MARCH 2008.

25 Q. AND IF YOU COULD DESCRIBE HOW THE FLASH ACCESS DRM SCHEME

1 WORKS.

2 (PUBLISHED TO JURY.)

3 **A.** OKAY. THIS IS A LITTLE DIFFERENT, WHAT'S BEING PROTECTED.

4 WE'VE GOT VIDEO IN THIS CASE, FOOTBALL GAME. COULD ALSO
5 HAVE AUDIO. THERE'S A NUMBER OF DIFFERENT THINGS FLASH CAN BE
6 USED FOR. BUT TYPICALLY A MORE -- NOT JUST A DOCUMENT.

7 SO HERE WE HAVE FLASH ACCESS.

8 NOW, WHEN YOU ATTEMPT TO ACCESS THE VIDEO, IN THIS
9 PARTICULAR CASE, A MACHINE I.D. AND A SERIAL I.D. ARE ONCE
10 AGAIN SENT TO THE SERVER. THIS WILL BE A LITTLE FAMILIAR.

11 THE MACHINE I.D. AND SERIAL I.D. ARE USED TO GENERATE A
12 KEY. THE KEY AND SOME OTHER MATERIAL ARE ENCRYPTED, SENT
13 ACROSS THE WEB. THE CLIENT COMPUTER THEN RETRIEVES THE KEY
14 AND YOU CAN WATCH THE FOOTBALL GAME.

15 **Q.** DR. WICKER, AS YOU WERE CONSIDERING THE FLASH PRODUCT, DID
16 YOU CONSIDER DIFFERENT CONFIGURATIONS?

17 **A.** YES. AS WITH ALM, THERE ARE MANY DIFFERENT
18 CONFIGURATIONS.

19 WITH REGARD TO FLASH, FOR EXAMPLE, YOU CAN LOCK THE KEY TO
20 THE DOMAIN NAME -- I THINK THAT WAS DISCUSSED EARLIER -- AND
21 NOT THE MACHINE.

22 SO, FOR EXAMPLE, WE'VE GOT DOMAIN SUPPORT THAT'S
23 REFERENCED IN THIS DOCUMENT, THE FLASH ACCESS OVERVIEW.
24 ANOTHER OPTION IS TO SIMPLY TURN OFF THE LICENSING. OKAY. NO
25 LICENSE, YOU CAN JUST USE IT.

1 ANOTHER ISSUE, AND I THINK THIS HAS BEEN DISCUSSED AS
2 WELL, THE LICENSE CAN BE PRE-DELIVERED. YOU CAN ACTUALLY GET
3 THE LICENSE BEFORE YOU GET THE CONTENT.

4 SO ALL OF THESE ARE DIFFERENT WAYS OF USING FLASH, AMONG
5 OTHERS.

6 Q. AS YOU UNDERSTAND DR. DEVANBU'S ANALYSIS, AND AS YOU
7 RESPONDED TO IT, WOULD THESE SCENARIOS FALL WITHIN HIS
8 INFRINGEMENT THEORY?

9 A. NO. NO. IN FACT, FROM WHAT HE JUST SAID, THEY WOULD NOT.
10 I THINK HE SAID THAT HIMSELF.

11 Q. NOW, DID YOU FORM AN AGREEMENT OR A DISAGREEMENT WITH
12 DR. DEVANBU WITH RESPECT TO WHETHER OR NOT THE FLASH ACCESS
13 PLATFORM INFRINGES CLAIM 1 OF THE '541 PATENT?

14 A. I DID NOT AGREE WITH REGARD TO INFRINGEMENT FOR ANY OF
15 THESE CONFIGURATIONS.

16 Q. OKAY. LET'S LOOK AT THE CLAIM, AND MAYBE YOU CAN EXPLAIN
17 WHY YOU DISAGREE WITH DR. DEVANBU ON INFRINGEMENT.

18 A. OKAY.

19 SO, IN THIS CASE, FOR FLASH, IT'S A LOT LIKE ALM. THERE'S
20 A QUESTION OF ARE WE RECEIVING A TOKEN OR ARE WE ACTUALLY
21 GETTING THE FULL PERMISSION.

22 SO WHAT I FOUND WAS -- WE CAN GO TO THE NEXT SLIDE.

23 (PUBLISHED TO JURY.)

24 THE FLASH PLATFORM DOESN'T GIVE A YES OR NO. WHAT IT DOES
25 IS IT PASSES A VOUCHER THAT INCLUDES A MACHINE LOCKED KEY. SO

1 THAT'S OUR KEY. THAT'S WHAT WE ARE GOING TO USE TO WATCH THE
2 GAME, OR WHATEVER. IT'S NOT A YES OR NO INDICATION.

3 Q. DR. WICKER, YOU WATCHED THE ENTIRE EXAMINATION OF
4 DR. DEVANBU, RIGHT?

5 A. I DID.

6 Q. DID YOU HEAR HIM OFFER ANY OPINION OR POINT TO ANYTHING AS
7 BEING A YES NO INDICATION IN WHAT HE POINTED TO AS THE TOKEN?

8 A. NO.

9 Q. NOW, YOU SAID YOU DISAGREE WITH HIM ON THE CONCLUSION OF
10 INFRINGEMENT.

11 DO YOU AGREE OR DISAGREE THAT THE FLASH PLATFORM DOESN'T
12 SEND A YES NO INDICATION TO THE CLIENT?

13 A. I DON'T BELIEVE IT SENDS A YES NO. IT SENDS A COMPLETE
14 VOUCHER WITH A MACHINE LOCKED KEY. THAT'S NOT A TOKEN.

15 Q. NOW IF WE CAN TURN TO THE NEXT LIMITATION.

16 IS THE LIMITATION 5, THE BASED ON THE RECEIVED TOKEN
17 GENERATING A CLIENT AT THE CLIENT A PERMISSION LIMITATION, IS
18 THAT MET IN THE FLASH ACCESS PLATFORM PRODUCT IN YOUR VIEW?

19 A. NO. NO.

20 AGAIN, IT'S THE SAME ISSUE. WE ARE EXECUTING -- THE CLAIM
21 CALLS FOR EXECUTING AN INSTALLATION PROCESS THAT GENERATES AT
22 THE CLIENT A PERMISSION.

23 AND AS I JUST SHOWED YOU, THE PERMISSION, THE LOCKED KEY,
24 IS GENERATED AT THE SERVER. WE TAKE A MACHINE I.D. AND A
25 SERIAL I.D., AND CRUNCH IT ALONG WITH SOME OTHER THINGS, AND

1 WE GET OUR KEY.

2 THE KEY IS ENCRYPTED AND THEN SENT TO OUR -- OUR LAPTOP OR
3 WHATEVER THE CASE MAY BE, WHATEVER WE ARE TRYING TO WATCH THE
4 GAME ON.

5 SO, THE PERMISSION, IF YOU WILL, THE KEY IS GENERATED AT
6 THE SERVER, NOT AT THE CLIENT.

7 Q. NOW, DR. WICKER, WERE THERE ANY ADOBE DOCUMENTS OR SUPPORT
8 THAT YOU LOOKED AT IN CONFIRMING THE DESCRIPTION THAT YOU JUST
9 PROVIDED?

10 A. YES.

11 FOR EXAMPLE, THIS IS THE ADOBE FLASH ACCESS 2.0 PROTECTING
12 CONTENT. IT NOTES THAT THE LICENSE SERVER ISSUES, TO ISSUE A
13 LICENSE TO THE USER. SO THAT'S WHERE THE LICENSE COMES FROM,
14 THE SERVER.

15 HERE'S FLASH ACCESS 3.0. THE LICENSE SERVER ISSUES A
16 LICENSE CONTAINING THE CONTENT ENCRYPTION KEY TO DECRYPT THE
17 CONTENT. THAT'S THE KEY WE NEED TO WATCH THE GAME.

18 Q. NOW, IF WE COULD, WHY DON'T WE SUM UP YOUR OPINION WITH
19 RESPECT TO '541 CLAIM 1 FOR FLASH ACCESS.

20 A. OKAY.

21 AS WITH THE PREVIOUS CASE, AS WITH ALM, FLASH ACCESS CAN'T
22 INFRINGE BECAUSE THERE'S NO TOKEN. WE ARE NOT GETTING THE YES
23 NO INDICATION, APPROVAL OR REJECTION. WHAT WE ARE GETTING IS
24 A COMPLETE DIGITAL KEY AND SOME OTHER INFORMATION.

25 AND THIS -- THIS PERMISSION, THIS KEY IS GENERATED NOT AT

1 THE CLIENT, BUT AT THE SERVER. SO THESE LAST TWO STEPS AREN'T
2 PERFORMED BY FLASH ACCESS.

3 Q. WHAT ABOUT THE DEPENDENT CLAIMS?

4 A. AGAIN, IF YOU DON'T INFRINGE THE FIRST CLAIM, YOU CAN'T --
5 LET ME REPHRASE THAT.

6 IF YOU DON'T INFRINGE THE INDEPENDENT CLAIM, YOU CAN'T
7 INFRINGE THE CLAIMS THAT DEPEND ON IT. SO, IF YOU DON'T
8 INFRINGE CLAIM 1, YOU CAN'T INFRINGE 2, 4 AND 13.

9 Q. OKAY. LAST PRODUCT FOR THIS CLAIM, THE LIVECYCLE RIGHTS
10 MANAGEMENT SERVER. DID YOU FORM AN OPINION AS TO WHETHER OR
11 NOT THE LIVECYCLE RIGHTS MANAGEMENT SERVER INFRINGES CLAIM 1
12 OF THE '541 PATENT?

13 A. YES, I DID.

14 Q. WHAT WAS YOUR OPINION?

15 A. IT DOESN'T INFRINGE EITHER.

16 Q. COULD YOU EXPLAIN A LITTLE BIT OF BACKGROUND ABOUT THE
17 PRODUCT AND YOUR BASIS FOR THAT CONCLUSION?

18 A. OKAY.

19 THIS DEVELOPMENT STARTED IN 2002, AND IT WAS RELEASED IN
20 2004. IT'S BASICALLY A TECHNOLOGY FOR LOCALLY CONTROLLING
21 ACCESS -- OR WITHIN A NETWORK, EXCUSE ME, FOR CONTROLLING
22 ACCESS TO DOCUMENTS.

23 Q. IF YOU COULD USE YOUR ANIMATION TO EXPLAIN HOW THAT WORKS.

24 A. SURE.

25 (PUBLISHED TO JURY.)

1 SO ONCE AGAIN WE'VE GOT A CLIENT COMPUTER. WE ARE TRYING
2 TO ACCESS A DOCUMENT. NOW, NOTE WE ARE SENDING TWO DIFFERENT
3 THINGS HERE. THAT WAS A USER I.D. THAT WENT BY VERY QUICKLY
4 AND A PASSWORD. THAT IS THEN USED TO PROCESS THE KEY THAT
5 WILL BE USED TO ACCESS THE DOCUMENT. THAT'S AN IMPORTANT
6 DIFFERENCE I'LL GET BACK TO.

7 THAT KEY IS THEN SENT BACK OVER THE WEB OR THE LAN,
8 WHATEVER THE CASE MAY BE. AND SO THIS PARTICULAR USER, IF
9 THEY ARE GRANTED ASSESS, WILL BE ABLE TO ACCESS THE DOCUMENT.

10 Q. AND, AGAIN, AS YOU DID WITH THE OTHER PRODUCTS, DID YOU
11 CONSIDER WHETHER OR NOT THERE ARE DIFFERENT CONFIGURATIONS OF
12 LIVECYCLE?

13 A. THERE ARE A LOT OF CONFIGURATIONS. IN FACT, THIS COMES
14 WITH AN SDK, A SOFTWARE DEVELOPMENT KIT, THAT ALLOWS YOU TO
15 FINE TUNE BASICALLY PROVIDES YOU WITH AN APPLICATION INTERFACE
16 SO THAT YOU CAN FINE TUNE EXACTLY WHAT YOU WANT THIS
17 PROTECTION SYSTEM TO DO.

18 SO, LOTS OF DIFFERENT VARIATIONS.

19 AND, IN PARTICULAR, I WANT TO EMPHASIZE, ONE, YOU CAN USE
20 THIS AS AN ONLINE OR AN OFFLINE SYSTEM. SO ONLINE, AS WE'LL
21 SEE, YOU'LL HAVE TO -- YOU IMMEDIATELY GO OUT AND GET
22 PERMISSION. BUT IF IT'S OFFLINE, YOU CAN ACTUALLY EMBED THE
23 PERMISSION IN THE DOCUMENT ITSELF SO YOU NEVER HAVE TO GO
24 ANYWHERE.

25 Q. LET'S TURN TO THE CLAIM. AND MAYBE YOU CAN WALK US

1 THROUGH THE BASIS FOR THAT CONCLUSION THAT YOU FORM THAT
2 LIVECYCLE DOESN'T INFRINGE.

3 **A.** OKAY. WELL, THIS TIME I'M GOING TO START WITH 2 AND 3.
4 THIS IS MY -- THE "IF NOT" STATEMENT.

5 (PUBLISHED TO JURY.)

6 SO, JUST TO REMIND YOU REAL QUICKLY, AT A CLIENT EXECUTING
7 AN ACCESS CHECKING PROCESS TO SEE WHETHER WE CAN GET ACCESS.
8 IF NOT, REQUESTING PERMISSION FROM AN EXTERNAL SOURCE.

9 OKAY. SO IF WE CAN CONTINUE ON.

10 (PUBLISHED TO JURY.)

11 NOTE THAT "IF NOT" AGAIN. BUT CONTINUING ON, I WANT TO
12 NOTE THAT RATHER THAN CHECK THE FIRST STEP, LIVECYCLE ALWAYS
13 REACHES OUT TO THE SERVER AND THE CONFIGURATION THAT HAS BEEN
14 ACCUSED OF INFRINGEMENT. IT DOES NOT FIRST LOOK FOR A
15 PERMISSION. OKAY?

16 I TALKED TO MR. HERBACH -- I THINK WE WILL HEAR FROM HIM
17 NEXT -- HE'S THE ENGINEER WHO DESIGNED AND BASICALLY RUNS THE
18 OPERATION THAT DEVELOPS LIVECYCLE. AND ALONG WITH THE
19 DOCUMENTS, HE EXPLAINED THAT LIVECYCLE ALWAYS REACHES OUT.
20 THERE IS NO CHECKING FOR A PERMISSION IN THE ONLINE VERSION.

21 **Q.** I'M GOING TO GO BACK AND ASK YOU NOW IF YOU CAN JUST WALK
22 US THROUGH THE LIVECYCLE OPERATION THERE.

23 **A.** OKAY.

24 SO, ONCE AGAIN, WE'VE GOT THE COMPUTER. NOW, WHEN WE TRY
25 AND ACCESS THE DOCUMENT IN THE ONLINE VERSION, WE MAY HAVE --

1 YOU ARE ALREADY OVER THERE. OKAY.

2 SO WE ARE GOING TO SEND THE USER I.D. AND THE PASSWORD
3 OVER HERE (INDICATING). I DON'T KNOW IF YOU SAW IT GO ACROSS,
4 BUT IT WENT ACROSS. AND THE USER I.D. AND PASSWORD ARE GOING
5 TO BE USED TO GENERATE THAT PERMISSION. SO WE ALWAYS REACH
6 OUT. WE ALWAYS SEND THE USER I.D. AND PASSWORD.

7 Q. NOW, WERE THERE DOCUMENTS THAT YOU LOOKED AT TO CONFIRM
8 THE OPERATION?

9 A. YES. THERE WERE A LOT OF DOCUMENTS, ACTUALLY, BUT I WILL
10 POINT TO THE LIVECYCLE -- IT'S ACTUALLY LIVECYCLE ES SERVICES.

11 SO WHAT THIS DESCRIBED WAS THE DOCUMENT IDENTIFIER IS SENT
12 TO THE RIGHTS MANAGEMENT SERVICE -- SERVER. THAT IDENTIFIER
13 IS ONE OF THE THINGS I POINTED OUT.

14 AND ANOTHER THING I WANT TO NOTE, THE DOCUMENT IS
15 DECRYPTED WHEN THAT KEY COMES BACK ACROSS THE WEB OR THE LAN
16 AND THE DOCUMENT KEY IS DISCARDED. SO IT'S NOT SAVED. SO
17 THERE'S NO REASON TO LOOK FOR THAT KEY LATER ON BECAUSE YOU
18 THREW IT AWAY.

19 Q. SO, YOU'VE ADDRESSED THE FIRST -- OR THE SECOND AND THE
20 THIRD LIMITATION.

21 A. RIGHT.

22 Q. WERE THERE ANY OTHER LIMITATIONS THAT YOU FOUND TO BE
23 MISSING?

24 A. WELL, THAT WAS ACTUALLY ENOUGH, BUT I WENT AHEAD AND
25 LOOKED AT THE LAST TWO STEPS.

1 AND, ONCE AGAIN, WE SEE THE SAME -- THE SAME ISSUES. THE
2 QUESTION OF A TOKEN, IS THERE A TOKEN PRESENT.

3 WELL, AS I SHOWED YOU, THERE IS NO TOKEN PRESENT.
4 INSTEAD, WHAT WE ARE GETTING FROM THE SERVER IS A VOUCHER THAT
5 INCLUDES A KEY. IT'S NOT AN APPROVAL OR A REJECTION, IT'S NOT
6 A YES OR A NO INDICATION, IT'S THE KEY. OKAY? IT'S WHAT YOU
7 NEED TO ACCESS THE DOCUMENT. AND THIS IS SOMETHING
8 MR. HERBACH CONFIRMED.

9 Q. SO WOULD THAT FOURTH LIMITATION OF CLAIM 1 OF THE '541 BE
10 MET BY LIVECYCLE?

11 A. NO.

12 Q. AND WHY DON'T WE TURN TO THE LAST LIMITATION.

13 WAS THE LAST LIMITATION MET IN YOUR ANALYSIS?

14 A. AGAIN, IT'S THE SAME THEME.

15 THE REQUIREMENT IS THAT WE GENERATE AT THE CLIENT A
16 PERMISSION. HAS TO BE DONE AT THE CLIENT THIS GENERATION OF
17 THE PERMISSION. BUT AS I'VE SHOWN YOU, IT'S GENERATED AT THE
18 SERVER. THE KEY COMES FROM THE SERVER. THE USER I.D. AND
19 PASSWORD ARE PROCESSED TO GENERATE THE KEY HERE AT THE SERVER
20 AND THEN THAT KEY IS SENT TO THE CLIENT.

21 Q. WERE THERE ANY DOCUMENTS THAT YOU LOOKED AT TO -- OR
22 ANALYZED AS PART OF YOUR ANALYSIS OF LIVECYCLE?

23 A. YES.

24 THIS, AGAIN, IS THE -- I THINK IT'S LIVECYCLE ES SERVICES.
25 IT SAYS, "RIGHTS MANAGEMENT ES CREATES A DOCUMENT LICENSE.

1 KEYS ARE SENT BACK TO THE CLIENT."

2 SO THIS IS ONE EXAMPLE OF A DOCUMENT, MR. HERBACH WILL
3 TALK ABOUT THIS AS WELL, I GUESS, BUT BASICALLY WHAT IT IS
4 SAYING IS THE RIGHTS MANAGEMENT CREATES THE LICENSE AND THEN
5 THE KEY IS SENT TO THE CLIENT. IT'S NOT GENERATED AT THE
6 CLIENT.

7 Q. AND DID YOU REVIEW THE LIVECYCLE POLICY SERVER SDK
8 DOCUMENT AS WELL?

9 A. YES. THIS TALKS ABOUT EXTRACTING THE POLICY DETAILS FROM
10 THE DOCUMENT. THAT'S ONE OF THE OTHER THINGS THAT COMES WITH
11 THE LICENSE. THERE ARE CERTAIN RULES OF USE, AND THOSE SORTS
12 OF THINGS.

13 Q. IF YOU CAN SUM UP WHETHER OR NOT THAT LAST LIMITATION IS
14 MET IN YOUR VIEW.

15 A. OKAY.

16 IN MY OPINION, AND I THINK TO SOME EXTENT DR. DEVANBU
17 AGREES, THAT LAST ISN'T SATISFIED EITHER BECAUSE THE KEY IS
18 ACTUALLY GENERATED AT THE SERVER, NOT AT THE CLIENT. SO
19 THAT'S WHY I X'D OUT THAT PART OF THE FIFTH STEP.

20 Q. I WANT TO FOCUS YOU IN ON ANOTHER ASPECT OF THE FIFTH
21 STEP, WHICH IS THIS "LOCKED UNIQUELY TO THE CLIENT ASPECT".

22 IS THIS SOMETHING -- WHY DON'T WE TALK ABOUT THAT FIRST
23 BEFORE WE TALK ABOUT IT IN THE CONTEXT OF LIVECYCLE.

24 IN THE CONTEXT OF THE CLAIM, WHAT IS THE SIGNIFICANCE OR
25 LACK OF SIGNIFICANCE OF LOCKED UNIQUELY TO THE CLIENT IN YOUR

1 VIEW?

2 **A.** OKAY. SO IT'S PART OF THE CLAIM LANGUAGE. IT'S SAYING
3 THAT THIS PERMISSION THAT'S GENERATED AT THE CLIENT IS LOCKED
4 UNIQUELY TO THE CLIENT, SO IT CAN ONLY BE USED BY THAT CLIENT.
5 THE CLIENT CAN THEN PASS IT ON TO SOMEBODY ELSE.

6 AND IT'S ALSO IMPORTANT BECAUSE IT'S ONE OF THE THINGS
7 THAT'S EMPHASIZED IN THE PATENT. FOR EXAMPLE, THIS IS '541
8 PATENT, COLUMN 9, LINES 4 THROUGH 9. WE LOCK THE PERMISSION
9 TO A PARTICULAR MACHINE. LOCK THE INSTALLATION TO A
10 PARTICULAR MACHINE. IT'S STATED RIGHT THERE IN THE PATENT.

11 **Q.** IS THAT -- I AM SORRY?

12 **A.** IT'S IMPORTANT IN MY ANALYSIS BECAUSE ADOBE'S DOCUMENTS
13 ARE LOCKED TO THE USERS AND LIVECYCLE, NOT TO A PARTICULAR
14 MACHINE.

15 THAT WAY THE USER CAN BE ON HIS OR HER LAPTOP, CAN BE ON A
16 WORK COMPUTER, WHEREVER, AND STILL ACCESS THE DOCUMENT BECAUSE
17 IT'S NOT LOCKED TO THE MACHINE.

18 USERS MUST LOG IN BEFORE PERFORMING THE FOLLOWING TASKS.
19 OPENING POLICY-PROTECTED DOCUMENTS. AGAIN, IT'S THE LIVECYCLE
20 SERVICES DOCUMENT.

21 **Q.** OKAY.

22 NOW, IF YOU COULD, LET'S SUMMARIZE YOUR OPINION AS TO
23 WHETHER OR NOT '541 CLAIM 1 IS MET BY THE LIVECYCLE PRODUCT.

24 **A.** OKAY.

25 IN THIS INSTANCE, NONE OF THE STEPS OF THE METHOD 2, 3, 4

1 AND 5 -- AFTER WE HAVE THE METHOD COMPRISING, WE HAVE ALL
2 THESE STEPS -- NONE OF THEM ARE PERFORMED BY LIVECYCLE.

3 YOU KNOW, I CAN WALK THROUGH IT AGAIN, BUT BASICALLY THEY
4 ARE NOT THERE.

5 **Q.** WHAT ABOUT THE DEPENDENT CLAIMS?

6 **A.** OKAY. THAT'S AGAIN THE SAME ARGUMENT. JUST SHOWED YOU
7 CLAIM 1 ISN'T PRACTICE. IF CLAIM 1 IS NOT PRACTICED, THE
8 DEPENDENT CLAIMS CAN'T BE PRACTICED EITHER. SO 2, 4 AND 13
9 CAN'T BE INFRINGED.

10 **Q.** NOW, DR. WICKER --

11 **THE COURT:** IT'S TIME TO TAKE OUR BREAK. IS THIS A
12 GOOD TIME?

13 **MS. MEHTA:** CERTAINLY, YOUR HONOR.

14 **THE COURT:** ALL RIGHT. IT'S 2:15. WE WILL BREAK
15 UNTIL 2:30 AND THEN WE WILL GO UNTIL 3:30.

16 (RECESS TAKEN AT 2:15 P.M.; RESUMED AT 2:30 P.M.)

17 (PROCEEDINGS HELD IN THE PRESENCE OF THE JURY.)

18 **THE CLERK:** YOU CAN BE SEATED.

19 REMAIN SEATED. COME TO ORDER. THIS COURT IS BACK IN
20 SESSION.

21 **BY MS. MEHTA:**

22 **Q.** ALL RIGHT, DR. WICKER.

23 I WANT TO TAKE CARE OF JUST ONE QUICK HOUSEKEEPING MATTER
24 WITH YOU. AND THAT IS, IF YOU CAN TURN IN YOUR BINDER TO
25 EXHIBIT PX65, WHICH IS A DOCUMENT YOU REFERENCED IN YOUR '541

1 SLIDES?

2 A. OKAY.

3 Q. DO YOU RECOGNIZE THAT DOCUMENT?

4 A. YES. THIS IS THE ADOBE FLASH ACCESS VERSION 2.0 THAT I
5 REFERRED TO.

6 Q. AND THAT'S SOMETHING THAT YOU CONSIDERED IN YOUR ANALYSIS?

7 A. YES.

8 Q. DOES THE EXHIBIT COPY LOOK LIKE THE COPY OF THE DOCUMENT
9 THAT YOU REVIEWED IN YOUR ANALYSIS?

10 A. YES, IT DOES.

11 MS. MEHTA: YOUR HONOR, WE MOVE PX65 INTO THE RECORD?

12 MR. DINOVO: NO OBJECTION, YOUR HONOR.

13 THE COURT: RECEIVED.

14 THE CLERK: PLAINTIFF'S EXHIBIT 65?

15 MS. MEHTA: YES.

16 THE CLERK: IT WAS PREVIOUSLY ADMITTED EARLIER THIS
17 MORNING.

18 MS. MEHTA: I APOLOGIZE. I MISSED THAT THIS MORNING.

19 BY MS. MEHTA:

20 Q. THEN ONE LAST ONE IS DX360. DEFENDANT'S EXHIBIT 360.

21 A. OKAY.

22 Q. DO YOU RECOGNIZE THAT DOCUMENT, DR. WICKER?

23 A. YES. THIS IS PART OF THE LIVECYCLE POLICY SERVER CLIENT
24 SDK SPECIFICALLY DEVELOPING CLIENT APPLICATIONS.

25 Q. AND IS THAT SOMETHING YOU CONSIDERED IN YOUR ANALYSIS?

1 **A.** YES, IT IS.

2 **Q.** IS THE DOCUMENT THAT YOU HAVE IN FRONT OF YOU MARKED
3 DEFENDANT'S EXHIBIT 360 THE SAME DOCUMENT YOU LOOKED AT?

4 **A.** YES. THIS IS THE DEVELOPING CLIENT APPLICATIONS DOCUMENT.

5 **MS. MEHTA:** YOUR HONOR, AT THIS TIME, WE MOVE
6 DEFENDANT'S EXHIBIT 360 INTO THE RECORD.

7 **MR. DINOVO:** NO OBJECTION.

8 **THE COURT:** RECEIVED.

9 (DEFENDANT'S EXHIBIT 360 RECEIVED IN EVIDENCE)

10 **BY MS. MEHTA:**

11 **Q.** DR. WICKER, LET'S CHANGE FOCUS TO THE '670 PATENT.

12 **A.** OKAY.

13 **MS. MEHTA:** MR. BONINI, IF WE CAN PLEASE PULL UP
14 DR. WICKER'S ILLUSTRATIVES FOR THE '670?

15 (PUBLISHED TO JURY.)

16 THERE WE GO.

17 **BY MS. MEHTA:**

18 **Q.** DR. WICKER, IF YOU CAN BRIEFLY GIVE US AN OVERVIEW OF THE
19 PATENT?

20 **A.** OKAY.

21 THE '670 IS A LITTLE DIFFERENT FROM WHAT WE WERE TALKING
22 ABOUT BEFORE. HERE, WE ARE GOING TO BE LOOKING AT TRACKING
23 THE ELECTRONIC CONTENT. THE POINT IS MORE WHO'S USING THE
24 DOCUMENT AND MAKING SURE WE, FOR EXAMPLE, COUNT THE NUMBER OF
25 USES AS OPPOSED TO SIMPLY CONTROLLING ACCESS.

1 Q. LET'S FOCUS IN ON CLAIM 45.

2 A. OKAY.

3 Q. AND I GUESS BEFORE I DO THAT, I WANT TO ASK YOU, YOU'VE
4 CONSIDERED DR. DEVANBU'S INFRINGEMENT OPINIONS WITH RESPECT TO
5 CLAIM 45?

6 A. THAT'S CORRECT.

7 Q. AND DO YOU AGREE OR DISAGREE?

8 A. I DO NOT AGREE.

9 Q. OKAY. NOW, LET'S -- MAYBE YOU CAN WALK US THROUGH THE
10 STEPS OF CLAIM 45 AND GIVE US AN OVERVIEW OF HOW THE CLAIMED
11 METHOD WORKS.

12 A. OKAY. MAY I GO BACK TO THE SCREEN?

13 Q. YES, PLEASE.

14 (PUBLISHED TO JURY.)

15 A. THIS IS CLAIM 45 OF THE '670.

16 AGAIN, IT'S A METHOD. IT'S GOT A SERIES OF STEPS THAT
17 I'VE NUMBERED. THE ACTUAL STEPS ARE 2, 3 AND 4, AND ONE IS
18 THE PREAMBLE.

19 Q. WHY DON'T WE START WITH STEP 1, OR THE PREAMBLE.

20 A. OKAY.

21 SO STEP 1 CALLS FOR A METHOD OF TRACKING ACCESS OF
22 ELECTRONIC CONTENT. WE WANT TO KNOW WHO USES IT.

23 IT'S A METHOD COMPRISING -- GO TO THE SECOND STEP --
24 CREATING A FILE THAT INCLUDES ELECTRONIC CONTENT.

25 SO THIS REPRESENTS THE FILE. AND IT'S GOT SOME KIND OF

1 ELECTRONIC CONTENT, ANY VARIETY OF THINGS. AND CONTINUING ON
2 WITH THIS STEP, AND CAUSES ACCESS TO THE CONTENT TO BE DENIED.
3 SO YOU'RE BLOCKED FROM USING IT.

4 AND THEN THE THIRD PIECE TELLS US HOW LONG YOU'RE BLOCKED.
5 YOU'RE BLOCKED UNTIL NOTIFICATION INFORMATION, THAT'S THE
6 LITTLE DOTS WE SEE GOING ACROSS -- UNTIL NOTIFICATION
7 INFORMATION COLLECTED BY EXECUTABLE INSTRUCTIONS HAS BEEN
8 SUCCESSFULLY TRANSMITTED. SO WE CREATE A FILE, BUT WE BLOCK
9 ACCESS TO IT UNTIL NOTIFICATION INFORMATION HAS BEEN
10 SUCCESSFULLY TRANSMITTED.

11 **Q.** DR. WICKER, WHAT'S THE SIGNIFICANCE OF THAT FINAL
12 LIMITATION OR FINAL HIGHLIGHTED PORTION OF THAT LIMITATION?

13 **A.** WELL, THIS PATENT IS ABOUT TRACKING. SO WHAT WE ARE
14 SAYING IS, UNTIL THAT TRACKING HAS BEEN ENABLED THROUGH
15 SUCCESSFUL TRANSMISSION, WE'RE GOING TO BLOCK ACCESS. SO
16 ACCESS IS BLOCKED UNTIL SUCCESSFUL TRANSMISSION.

17 **Q.** WAS THERE ANY EVIDENCE YOU RELIED UPON TO CONFIRM THAT
18 UNDERSTANDING?

19 **A.** YES.

20 FOR EXAMPLE, THERE WAS DISCUSSION OF A RELATED PATENT --
21 THIS IS PART OF THE FILE HISTORY -- FOR THE RELATED PATENT
22 THAT INCORPORATED THE PATENT WE'RE LOOKING AT, AND THE PATENT
23 OFFICE TALKED ABOUT ITS UNDERSTANDING OF WHAT THE LANGUAGE
24 THAT WAS IN THIS RELATED PATENT MEANT.

25 IT SAID, "APPLICANTS ARGUE THE INVENTION AS CLAIMED GRANTS

1 ACCESS IMMEDIATELY UPON TRANSMISSION OF THE NOTIFICATION,
2 WITHOUT WAITING FOR A RESPONSE FROM THE SERVER".

3 SO THIS TELLS ME THAT IT'S THE TRANSMISSION THAT I SHOULD
4 FOCUS ON IN DETERMINING WHEN ACCESS WILL BE GRANTED.

5 **MS. MEHTA:** YOUR HONOR, AT THIS TIME WE WOULD MOVE
6 DEFENDANT'S 505, PAGES 1449 AND 1432 INTO THE RECORD.

7 **MR. DINOVO:** NO OBJECTION.

8 **THE COURT:** RECEIVED.

9 (DEFENDANT'S EXHIBITS 505 (PGS 1432 & 1449) RECEIVED IN
10 EVIDENCE)

11 **THE CLERK:** I'M SORRY. CAN I HAVE THE NUMBERS AGAIN?

12 **MS. MEHTA:** EXHIBIT 505, 1449, 1432.

13 **THE CLERK:** THANK YOU.

14 **BY MS. MEHTA:**

15 **Q.** NOW, DR. WICKER, IF YOU COULD MAYBE GIVE US AN OVERVIEW OF
16 HOW ALL OF THE STEPS FIT TOGETHER?

17 **A.** OKAY.

18 SO I'LL START WITH TRANSMITTING THE FILE TO AT LEAST ONE
19 ADDRESS.

20 SO WE HAVE ALREADY SEEN THE EARLIER REQUIREMENT. NOW WE
21 ARE GOING TO TRANSMIT THE FILE FROM THE ENVELOPE CREATOR TO A
22 RECIPIENT. AND THEN MAYBE ON TO A SUCCESSIVE RECIPIENT. THAT
23 SUCCESSIVE LANGUAGE IS IMPORTANT. AND THEN ON TO ANOTHER --
24 WE CAN DO THIS OVER AND OVER. BUT I'VE GOT TWO SUCCESSIVE
25 RECIPIENTS AND ONE RECIPIENT.

1 Q. AND THEN WHAT ABOUT THE NEXT STEP?

2 A. THE NEXT STEP BRINGS IN THAT SUCCESSIVE PART.

3 RECEIVING NOTIFICATION INFORMATION FROM A SUCCESSIVE
4 RECIPIENT.

5 SO WE'VE GOT OUR ENVELOPE CREATOR. WE SEND THE FILE TO
6 THE RECIPIENT. WE CAN TOGGLE THAT. NOW, THE RECIPIENT IS
7 GOING TO BE BLOCKED FROM USING THAT UNTIL THE SUCCESSFUL
8 TRANSMISSION. SO NO ACCESS. BUT HERE WE SEE THE
9 TRANSMISSION, SUCCESSFUL TRANSMISSION, THE USER GETS ACCESS.

10 NOW LET'S SUPPOSE THIS RECIPIENT SENDS IT ON TO A
11 SUCCESSIVE RECIPIENT. IT'S WHEN THE SUCCESSIVE RECIPIENT
12 ATTEMPTS TO ACCESS, TRANSMISSION SUCCESSFUL ACCESS IS GRANTED.
13 THAT'S WHAT SATISFIES THIS CLAIM LANGUAGE, RECEIVING FROM THE
14 SUCCESSIVE RECIPIENT.

15 WE WILL DO IT AGAIN. HERE'S ANOTHER SUCCESSIVE RECIPIENT.
16 THEY ATTEMPT TO ACCESS, SUCCESSFUL TRANSMISSION ACCESS IS
17 GRANTED, AND WHEN IT'S RECEIVED, THEY RECEIVE THE INFORMATION
18 FROM A SUCCESSIVE RECIPIENT.

19 Q. AND WHAT WAS THE MEANING OF SUCCESSIVE RECIPIENT THAT YOU
20 APPLIED IN YOUR ANALYSIS?

21 A. THE COURT PROVIDED THE CONSTRUCTION FOR ME. THE COURT
22 SAYS, SUCCESSIVE RECIPIENT MEANS USER THAT RECEIVES ELECTRONIC
23 CONTENT FROM A PREVIOUS RECIPIENT. SO THAT TOLD ME WHAT IT
24 MEANT.

25 Q. WAS THERE ANY OTHER SUPPORT THAT YOU LOOKED AT TO EVALUATE

1 WHAT THAT MEANS IN THE CONTEXT OF THE COURT'S CLAIM
2 CONSTRUCTION?

3 **A.** THE COURT'S CLAIM CONSTRUCTION WAS REFLECTED IN THE PATENT
4 AND IN, FOR EXAMPLE, THE FILE HISTORY, THE BACK AND FORTH
5 BETWEEN THE INVENTOR AND THE PATENT OFFICE.

6 HERE WE SEE THE PATENTEE CONFIRMING WHAT THIS MEANS. THE
7 ENVELOPE MAY BE RETRANSMITTED BY AN INITIAL RECIPIENT TO
8 SUCCESSIVE RECIPIENTS. AND THEN IT GOES ON FROM THERE. SO
9 IT'S TELLING ME SUCCESSIVE MEANS AFTER THAT FIRST RECIPIENT,
10 WHICH MAKES SENSE.

11 **MS. MEHTA:** YOUR HONOR, AT THIS TIME WE WOULD MOVE
12 PAGE 232 OF PX4, WHICH IS THE FILE HISTORY, INTO EVIDENCE.

13 **MR. DINOVO:** NO OBJECTION.

14 **THE COURT:** RECEIVED.

15 (PLAINTIFF'S EXHIBIT 4 (PG 232) RECEIVED IN EVIDENCE)

16 **BY MS. MEHTA:**

17 **Q.** NOW, DR. WICKER, LET'S --

18 **THE COURT:** AGAIN, WHAT I WANT TO DO IS PUT A JOINT
19 EXHIBIT WITH THE RELEVANT PAGES OF THE FILE HISTORY INTO ONE
20 EXHIBIT.

21 **MS. MEHTA:** YES, YOUR HONOR. WE WILL WORK TOGETHER
22 TO DO THAT. THANK YOU.

23 **BY MS. MEHTA:**

24 **Q.** IF WE COULD TRANSITION INTO THE ACCUSED PRODUCTS AND HOW
25 THEY WORK.

1 AGAIN, WE WILL START WITH THE LIVECYCLE RIGHTS MANAGEMENT
2 PRODUCT.

3 **A.** OKAY.

4 **Q.** SO WHY DON'T WE DO THAT?

5 **A.** OKAY. LIVECYCLE DOESN'T SATISFY FOR A COUPLE OF REASONS.

6 FIRST THING I WOULD LIKE TO FOCUS ON IS THIS CAUSES ACCESS
7 TO BE DENIED UNTIL NOTIFICATION INFORMATION HAS BEEN
8 SUCCESSFULLY TRANSMITTED.

9 IF WE CAN GO TO THE NEXT SLIDE.

10 (PUBLISHED TO JURY.)

11 WE SEE THAT LIVECYCLE DOES NOT GRANT ACCESS UPON
12 TRANSMISSION -- SUCCESSFUL TRANSMISSION. IT'S NOT THE WAY
13 IT'S DONE. LIVECYCLE REQUIRES A KEY FROM THE SERVER.

14 SO IT'S NOT THE SUCCESSFUL TRANSMISSION THAT DETERMINES.
15 IT'S GETTING THAT KEY.

16 SO IF WE CONTINUE ON, WE SEE THAT NUMBER ONE, SOMEONE
17 TRIES TO OPEN A DOCUMENT -- THESE ARE THE VARIOUS APPLICATIONS
18 WE COULD BE LOOKING AT, ACROBAT PROFESSIONAL, ADOBE READER.
19 IF SOMEONE TRIES TO OPEN A DOCUMENT, THE SYSTEM PROVIDES THE
20 USER NAME AND PASSWORD, IT'S SENT OVER TO THE LIVECYCLE RIGHTS
21 MANAGEMENT SERVER, IT AUTHENTICATES THE USER, CHECKS THE
22 POLICY FOR AUTHORIZATION -- AND REMEMBER THIS IS THE USER, NOT
23 THE MACHINE -- CHECKS THE POLICY FOR AUTHORIZATION, AND THEN
24 CREATES A VOUCHER THAT CONTAINS THE KEY AND SENDS IT BACK.

25 SO IT'S NOT THE TRANSMISSION THAT CAUSES THE SUCCESSFUL

1 ACCESS, IT'S THAT VOUCHER WITH THE DOCUMENT KEY AND
2 PERMISSIONS.

3 Q. WERE THERE ANY OTHER DOCUMENTS THAT YOU LOOKED AT TO
4 CONFIRM THAT UNDERSTANDING?

5 A. WELL, THERE WERE SEVERAL. FOR EXAMPLE, THIS IS THE
6 LIVECYCLE OVERVIEW. AND IT TALKS ABOUT -- THIS IS ACTUALLY
7 FROM THE SDK -- OVERALL SDK HAS A LOT OF DOCUMENTS. THIS IS
8 ONE.

9 THE LIVECYCLE ES PROVIDES DEVELOPMENT TOOLS THAT ALLOW A
10 WIDE VARIETY OF USERS, ET CETERA, TO DEVELOP THIS. AND ONE OF
11 THE THINGS THAT IT TALKS ABOUT IN THIS SDK IS THAT WE CAN USE
12 THE SYSTEM ONLINE OR OFFLINE.

13 SO THERE'S A LOT OF DIFFERENT USES. DOCUMENT PROTECTION
14 FOR OFFLINE USE, WE CAN ACTUALLY EMBED THE KEY IN IT. SO IT
15 HAS NOTHING TO DO WITH TRANSMITTING SUCCESSFULLY.

16 Q. NOW THIS IS AN IMPORTANT POINT SO I WANT TO MAKE SURE WE
17 ARE CLEAR ON YOUR OPINION ON THIS.

18 REGARDING THIS SUCCESSFUL TRANSMISSION LIMITATION, MAYBE
19 YOU CAN JUST EXPLAIN AGAIN WHY YOU FORM THE CONCLUSION THAT
20 THAT'S NOT MET BY THE LIVECYCLE PRODUCT.

21 A. OKAY. SO, AGAIN, THE DETERMINATIVE POINT IS NOT
22 SUCCESSFUL TRANSMISSION, IT'S GETTING A KEY. LIVECYCLE
23 REQUIRES A KEY BEFORE GRANTING ACCESS.

24 NOW, IT DOESN'T GRANT ACCESS UPON SUCCESSFUL TRANSMISSION
25 BECAUSE FIRST OFF, ACCESS MAY BE DENIED. YOU MAY SUCCESSFULLY

1 TRANSMIT AND THEN BE TURNED DOWN.

2 IN ANOTHER SITUATION, WE MAY GET ACCESS WITHOUT ANY
3 TRANSMISSION. THAT'S THE OFFLINE VERSION THAT'S BEEN
4 DISCUSSED IN COURT.

5 Q. NOW, IF YOU COULD, WAS THERE ANY OTHER -- ACTUALLY, I
6 THINK WE'VE COVERED THIS ALREADY. I'M GOING TO MOVE PASSED
7 THIS WHEN WE LOOKED AT THIS BEFORE.

8 SO WITH RESPECT TO THE CLAIM, YOU'VE TALKED ABOUT THE
9 SECOND LIMITATION. WHY DON'T WE TURN TO THE DEPENDENT CLAIMS.

10 A. OKAY.

11 SO THE LIMITATION WASN'T MET. THERE WAS NO INFRINGEMENT
12 OF CLAIM 45, AND IN THIS CASE, THE DEPENDENT CLAIM IS CLAIM 52
13 WHICH INCLUDES 45. IF YOU DON'T INFRINGE 45, YOU CAN'T
14 INFRINGE 52.

15 Q. OKAY. THANK YOU.

16 WHY DON'T WE TURN TO THE ALM PRODUCT.

17 A. OKAY.

18 Q. AND IF YOU COULD, IF YOU CAN DESCRIBE HOW ALM FOR VOLUME
19 LICENSING WORKS IN THE CONTEXT OF DR. DEVANBU'S INFRINGEMENT
20 ALLEGATIONS AND ALL OF THE MATERIALS YOU CONSIDERED.

21 A. WHAT WAS DISCUSSED THEN WAS THIS VOLUME LICENSING
22 SITUATION IN WHICH A LICENSE IS PROVIDED TO A COMPANY -- SO
23 WE'LL MOVE THE LICENSE OVER -- AND IT'S IN THE FORM OF AN
24 INSTALLATION FILE. THAT WAS DISCUSSED IN SOME DETAIL DURING
25 THE EARLY AFTERNOON.

1 THAT INSTALLATION FILE IS PROVIDED TO DIFFERENT USERS. SO
2 IT'S PUT ON A SERVER, FOR EXAMPLE. INDIVIDUAL USERS WILL
3 DOWNLOAD OR UPGRADE THEIR PARTICULAR PRODUCTS.

4 AND NOW LET'S SUPPOSE A PARTICULAR USER WANTS TO ACCESS
5 THE PRODUCT. INSTALLS THE PRODUCT FIRST. THERE'S NO DRM ON
6 THE INSTALLATION, SO WE GET THE FILES.

7 NOW, WHEN WE ACTUALLY TRY TO ACCESS THE APPLICATION, TRY
8 AND USE THE EXECUTABLE FILE, THAT'S WHEN WE HAVE TO GO GET THE
9 KEY. SO REMEMBER, THIS IS LIVECYCLE. WHEN YOU TRY AND USE
10 IT, YOU'VE GOT TO GO GET A KEY IMMEDIATELY. THERE'S NO --

11 **Q.** DOCTOR, I AM SORRY TO INTERRUPT YOU.

12 YOU JUST SAID TO LIVECYCLE. DID YOU MEAN TO SAY ALM?

13 **A.** I MEANT TO SAY ALM. I'M SORRY.

14 **Q.** NO PROBLEM.

15 **A.** MY MISTAKE. LET'S STICK WITH ALM.

16 SO WITH ALM, WHEN WE ATTEMPT TO ACCESS, THE MACHINE I.D.
17 AND THE SERIAL I.D. ARE SENT TO THE SERVER. THE SERVER USES
18 THEM TO CREATE A KEY, A COMPLETE PERMISSION, WHICH IS THEN
19 SENT BACK TO THE USER. AND THE USER CAN THEN ACCESS.

20 **Q.** NOW, IS THAT FIRST USER A SUCCESSIVE RECIPIENT?

21 **A.** NO. NO. BECAUSE THIS USER DOWNLOADED IT, HAD THE
22 ORIGINAL -- ORIGIN INSTALL FILE, INSTALLED IT, AND NOW THEY
23 ARE TRYING TO ACCESS. AND THEY HAD TO GO THROUGH THIS
24 PROCESS.

25 **Q.** NOW WHAT HAPPENS WHEN A DIFFERENT USER WANTS TO ACCESS

1 CONTENT THEY DOWNLOADED FROM THE SERVER?

2 **A.** SAME THING HAPPENS. MACHINE I.D., SERIAL I.D. SENT, GOES
3 BACK WITH A KEY, GETS ACCESS, AND THE SAME WITH THIS
4 INDIVIDUAL HERE. MACHINE I.D., SERIAL I.D., USED TO GENERATE
5 THE KEY AT THE SERVER, IT THEN GOES BACK.

6 **Q.** THANK YOU, DR. WICKER.

7 NOW, WE TALKED A LITTLE BIT ABOUT THE OTHER
8 CONFIGURATIONS -- DIFFERENT CONFIGURATIONS OF ALM WITH RESPECT
9 TO THE '541.

10 DID YOU ALSO CONSIDER THOSE WITH RESPECT TO THE '670?

11 **A.** YES.

12 AS WITH THE OTHER PRODUCTS, THERE ARE A NUMBER OF
13 DIFFERENT CONFIGURATIONS. FOR EXAMPLE, NEED ACCESS TO THE
14 INTERNET. SOMETIMES WE DO, SOMETIMES WE DON'T.

15 INCLUDE OR EXCLUDE THE MACHINE NAME TRACKING. SOMETIMES
16 YES, SOMETIMES NO. AND, AGAIN, THE E-LICENSE FILTER.

17 SO THERE ARE A LOT OF DIFFERENT CONFIGURATIONS FOR ALM.

18 **Q.** LET'S GO BACK TO THE CLAIM. IF YOU CAN EXPLAIN WHETHER OR
19 NOT YOU BELIEVE THE SECOND LIMITATION THAT YOU'VE HIGHLIGHTED
20 HERE IS MET BY THE ALM PRODUCTS.

21 **A.** OKAY.

22 AGAIN, WITH ALM, YOU DON'T ACCESS UNTIL YOU GET THE KEY.
23 AND WHAT THE CLAIM -- IF WE CAN GO BACK FOR A MOMENT.

24 **Q.** I'M SORRY.

25 (PUBLISHED TO JURY.)

1 **A.** WHAT THE CLAIM REQUIRES IS ACCESS IS DENIED UNTIL
2 NOTIFICATION INFORMATION IS SUCCESSFULLY SENT.

3 WELL, AS WE HAVE SEEN, THAT'S NOT ENOUGH. IT DOESN'T WORK
4 LIKE THAT. ADOBE REQUIRES A LICENSE BEFORE GETTING ACCESS.
5 BUT THERE'S A CAVEAT HERE. YOU CAN USE IT FREELY FOR 30 DAYS
6 USING TRY AND BUY BEFORE YOU GET THE KEY. SO, BOTH OF THESE
7 SHOW -- THERE ARE TWO DIFFERENT WAYS THAT SHOW THAT THAT CLAIM
8 LIMITATION IS NOT MET.

9 **Q.** I'M GOING TO STOP YOU FOR A SECOND AND ASK YOU ABOUT THIS
10 TRY AND BUY PERIOD.

11 IF A PERSON DOWNLOADS THE SOFTWARE, AND THEN DURING THE
12 30-DAY TRY AND BUY PERIOD ACTIVATES IT, WILL THEY EVER HAVE
13 BEEN DENIED ACCESS TO THE SOFTWARE?

14 **A.** NO. IF YOU ACCESS IT ON THE 29TH DAY, YOU WILL HAVE
15 SEEMLESS USE. YOU ARE NEVER DENIED.

16 **Q.** THEN YOU HAVE ANOTHER BULLET HERE. CAN YOU EXPLAIN THE
17 SIGNIFICANCE OF THAT?

18 **A.** ADOBE DOES NOT GRANT ACCESS UPON SUCCESSFUL TRANSMISSION.
19 THE SUCCESSFUL TRANSMISSION DOESN'T DETERMINE ANYTHING.
20 ACCESS CAN BE DENIED EVEN IF THE TRANSMISSION WAS SUCCESSFUL
21 IF FOR SOME REASON, YOU KNOW, YOU ARE NOT ON THE LIST FOR
22 ACCESSING THE DOCUMENT OR USING THE APPLICATION.

23 **Q.** WERE THERE ANY DOCUMENTS OR OTHER SUPPORT THAT YOU USED TO
24 CONFIRM THAT UNDERSTANDING?

25 **A.** YEAH. THIS IS THE SAME ALM WHITE PAPER WE LOOKED AT ABOUT

1 30, 40 MINUTES AGO. IT TALKS ABOUT USE FOR A 30-DAY GRACE
2 PERIOD. THAT'S THE TRY AND BUY.

3 ALSO TALKS ABOUT THE USER HAVING TO DOWNLOAD AN E-LICENSE
4 FOR UNINTERRUPTED USE OF THE PRODUCT. SO THAT'S THOSE TWO
5 ISSUES THAT I HAVE WITH THE INFRINGEMENT ANALYSIS. ONE, YOU
6 CAN USE IT BEFORE THERE'S ANY TRANSMISSION AND, TWO,
7 TRANSMISSION IS NOT ENOUGH IN THE LONG RUN BECAUSE YOU HAVE TO
8 HAVE THE LICENSE.

9 Q. NOW, WAS THAT THE END OF YOUR ANALYSIS WITH RESPECT TO
10 CLAIM 45 AND THE ALM PRODUCT?

11 A. NO. WE CONTINUE ON.

12 I WOULD LIKE TO NOTE THERE'S ADDITIONAL MATERIAL, NAMELY,
13 REQUIREMENT FOR CREATING A FILE AND TRANSMITTING THE FILE.

14 Q. AND IF YOU COULD EXPLAIN WHETHER YOU BELIEVE THAT THOSE
15 LIMITATIONS ARE MET.

16 A. AGAIN, TALKING ABOUT CREATION AND TRANSMISSION. THERE HAS
17 TO BE A FILE THAT INCLUDES ELECTRONIC CONTENT. AND THEN,
18 AGAIN, CAUSES ACCESS TO BE DENIED, ET CETERA. I WOULD LIKE TO
19 FOCUS ON THIS ELECTRONIC CONTENT.

20 WHAT HAS BEEN ACCUSED AND WHAT WAS DISCUSSED EARLIER TODAY
21 IN COURT WAS THE INSTALLER. THE INSTALLER GOES TO THE
22 COMPANY, PUT ON A SERVER, PEOPLE DOWNLOAD IT, AND IT'S --
23 THERE IS NO DRM ON THE INSTALLER. THERE IS NO DENIAL OF
24 ACCESS TO THE INSTALLER. YOU CAN INSTALL. IT'S ONLY LATER
25 WHEN WHAT'S ACTUALLY BEEN INSTALLED IS ACCESSED THAT YOU

1 ENCOUNTER POTENTIALLY DRM. BUT THE INSTALLER ITSELF IS NOT
2 PROTECTED.

3 Q. NOW, IN THAT EXAMPLE THAT YOU JUST DESCRIBED, OR IN
4 DESCRIBING THE PRODUCT, WHO IS IT THAT'S CREATING THE FILE?

5 A. WHO IS IT THAT'S CREATING THE FILE?

6 WELL, ADOBE DIDN'T CREATE THE FILE. THE FILE HAS NOT BEEN
7 CREATED BY THE INSTALLER, IF THAT'S WHAT YOU ARE ASKING. THAT
8 WAS DISCUSSED EARLIER. THERE REALLY IS NO EVIDENCE IN COURT
9 AS TO HOW THAT INSTALLER ACTUALLY WORKS. THE INSTALLER IS NOT
10 JUST A COLLECTION OF FILES.

11 Q. NOW, IN TERMS OF THE SECOND PART OF THAT LIMITATION THAT
12 YOU WERE TALKING ABOUT, MAYBE YOU CAN ADDRESS THAT.

13 A. OKAY. I SORT OF -- I TOUCHED ON THIS A BIT.

14 THE SECOND PART OF THE LIMITATION IS CAUSES ACCESS TO THE
15 ELECTRONIC CONTENT TO BE DENIED UNTIL NOTIFICATION INFORMATION
16 IS SENT.

17 INSTALLER FILE DOESN'T DO THAT. IF YOU'VE INSTALLED
18 SOFTWARE, YOU KNOW IT WILL HAPPILY LET YOU INSTALL IT. IN
19 MOST CASES, IT'S -- IT'S LATER ON THAT POTENTIALLY YOU MAY
20 HAVE ISSUES. BUT THE INSTALLER FILE CERTAINLY DOESN'T DO
21 THIS. IT DOESN'T HAVE ANY DRM.

22 Q. LET'S TURN TO THE NEXT LIMITATION THEN. IF YOU COULD
23 DESCRIBE YOUR ANALYSIS WITH RESPECT TO THE SUCCESSIVE
24 RECIPIENT LIMITATION.

25 A. WHAT'S CALLED FOR HERE IS RECEIVING NOTIFICATION

1 INFORMATION FROM A SUCCESSIVE RECIPIENT OTHER THAN THE ONE --
2 THE IMMEDIATE SENDER OF THE ELECTRONIC CONTENT.

3 IT'S JUST NOT THE FIRST USER TO GET IT, IT'S THE
4 SUCCESSIVE RECIPIENT. WHEN YOU GET THE NOTIFICATION
5 INFORMATION FROM THAT SUCCESSIVE RECIPIENT, YOU SATISFY THE
6 STEP.

7 Q. MAYBE YOU CAN SHOW US ON THIS GRAPHIC WHETHER YOU FOUND
8 THERE TO BE A SUCCESSIVE RECIPIENT IN THE ALM CONTEXT.

9 (PUBLISHED TO JURY.)

10 A. OKAY.

11 SO HERE WE HAVE THE INSTALLER FILE, POTENTIALLY ON A
12 SERVER. IT'S BEING DOWNLOADED BY DIFFERENT USERS. EACH OF
13 THESE USERS IS AN ORIGINAL RECIPIENT. THEY DIDN'T USE IT --
14 SORRY. THEY DIDN'T RECEIVE IT FROM ANOTHER USER. THEY JUST
15 DOWNLOADED IT, OBTAINED IT FROM THE COMPANY, AND THAT'S IT.

16 AS WAS DISCUSSED AGAIN EARLIER, THERE'S NO EVIDENCE THAT
17 PEOPLE ARE PASSING IT AROUND.

18 Q. IF YOU COULD JUST SUMMARIZE YOUR OPINION WITH RESPECT TO
19 CLAIM 45.

20 A. OKAY. SO, WE'VE LOOKED AT ALL OF THESE STEPS AND 2, 3 AND
21 4, AS I'VE SHOWN, ARE NOT PRACTICED BY THE INSTALLER.

22 Q. YOU UNDERSTAND THAT THE DEPENDENT CLAIM, CLAIM 52 IS ALSO
23 ASSERTED, RIGHT?

24 A. THAT'S CORRECT.

25 Q. DID YOU REACH A CONCLUSION AS TO INFRINGEMENT BY THE

1 DEPENDENT CLAIM?

2 **A.** YES, I DID.

3 **Q.** WHAT WAS THAT CONCLUSION?

4 **A.** AGAIN, SINCE THE INDEPENDENT CLAIM IS NOT SATISFIED, THE
5 DEPENDENT CLAIM CAN'T BE. YOU HAVE TO HAVE THE INDEPENDENT
6 CLAIM PLUS WHATEVER THE DEPENDENT CLAIM CALLS FOR.

7 **Q.** THANK YOU, DR. WICKER.

8 NOW I WANT TO TURN YOUR ATTENTION TO ONE LAST TOPIC THAT
9 RELATES TO OR CUTS ACROSS BOTH OF THE PATENTS, THE '541 AND
10 THE '670, AND THAT'S THE TOPIC OF DESIGN-AROUND OPTIONS.

11 IF YOU CAN BRIEFLY DESCRIBE -- WELL, LET ME START BY
12 ASKING, DID YOU FORM ANY OPINIONS WITH RESPECT TO
13 DESIGN-AROUND OPTIONS?

14 **A.** YES, I DID.

15 **Q.** AND IF YOU CAN BRIEFLY DESCRIBE FIRST WHAT DESIGN-AROUND
16 OPTIONS ARE, AND THEN WE WILL TALK ABOUT YOUR ANALYSIS.

17 **A.** OKAY.

18 THIS FACTORS INTO THE DAMAGES, THE ECONOMIC SIDE OF THE
19 CASE, BUT BASICALLY THE ISSUE IS, ASSUMING THAT THERE IS
20 INFRINGEMENT, AND THAT'S SOMETHING I OBVIOUSLY DON'T AGREE
21 WITH, BUT ASSUMING THERE IS, HOW HARD WOULD IT HAVE BEEN TO
22 DESIGN AROUND. YOU KNOW, IF IT'S AN EASY FIX, THAT'S AN
23 IMPORTANT THING TO CONSIDER.

24 SO THAT WAS SOMETHING I CONSIDERED. I ASKED MYSELF, YOU
25 KNOW, WHAT KIND OF DESIGN-AROUND OPTIONS WOULD THERE HAVE BEEN

1 ASSUMING THAT THESE, YOU KNOW, PRODUCTS ACTUALLY DO INFRINGE.

2 AND THE DATE WAS IMPORTANT. I UNDERSTAND IT TO BE THE
3 DATE THAT INFRINGEMENT ALLEGEDLY BEGAN. SO IT'S AN ASSUMPTION
4 I WAS REQUIRED TO MAKE.

5 I SAID, HOW COULD I DESIGN AROUND? WELL, THERE'S A LOT OF
6 WAYS --

7 Q. SORRY, I JUST WANT TO CLARIFY.

8 WITH RESPECT TO THE DATE, THAT'S THE -- THAT WAS THE DATE
9 YOU WERE ASKED TO ASSUME FOR THIS ANALYSIS, RIGHT?

10 A. THAT'S CORRECT.

11 SO IN 2005, WHAT COULD WE HAVE DONE? WHAT COULD ADOBE
12 HAVE DONE? WELL, THEY COULD HAVE REARRANGED SECTIONS OF CODE
13 SO THAT THINGS OPERATED A LITTLE DIFFERENTLY, SO THEY DIDN'T
14 OPERATE IN THE ACCUSED MANNER.

15 FOR EXAMPLE, DON'T ALLOW KEYS TO BE SAVED IN MEMORY. YOU
16 CAN'T GO LOOK IN MEMORY FOR A PREVIOUSLY SAVED PERMISSION IF
17 YOU DON'T ALLOW KEYS TO BE SAVED. THAT'S A RELATIVELY SIMPLE
18 THING TO DO.

19 UTILIZE LOCAL ACTIVATION PROCESSES. ADOBE ALREADY HAS
20 TECHNIQUES FOR EMBEDDING KEYS THAT DON'T REQUIRE ACCESSING A
21 SERVER. THAT'S SOMETHING ELSE ADOBE COULD HAVE DONE AS
22 OPPOSED TO USING THE ACCUSED TECHNIQUES.

23 AND HAVING THOUGHT OF THESE, I WAS ABLE TO TALK TO ADOBE
24 ENGINEERS AND ACTUALLY ASK THEM HOW HARD WOULD IT HAVE BEEN TO
25 MAKE THESE CHANGES. AND THEY CONFIRMED THAT IN SOME CASES,

1 THEY WOULD HAVE BEEN REALLY EASY. IN OTHER CASES, THEY WOULD
2 HAVE TAKEN A SMALL AMOUNT OF TIME. BUT OVERALL IMPLEMENTING
3 THESE OPTIONS WOULD HAVE BEEN TRIVIAL.

4 THESE ARE SOMETHING THAT, FOR EXAMPLE, THE GENTLEMAN THAT
5 WE'LL TALK TO NEXT, MR. HERBACH TALKED TO ME ABOUT, AND OTHERS
6 AS WELL. AND THE CUSTOMERS WOULD NOT HAVE BEEN AFFECTED.
7 THERE MAY BE SMALL VARIATIONS AND TIME DELAYS, BUT SO SMALL AS
8 TO NOT BE NOTICEABLE.

9 SO, YOU KNOW, BASICALLY THERE WERE DESIGN-AROUND OPTIONS
10 AVAILABLE THAT WOULD HAVE BEEN RELATIVELY PAINLESS.

11 **Q.** JUST TO BE CLEAR, THESE DESIGN-AROUND OPTIONS THAT YOU
12 CONSIDERED ARE WITH RESPECT TO DR. DEVANBU'S OPINION THAT WHAT
13 WE ARE DOING -- OR WHAT ADOBE IS DOING NOW INFRINGES, RIGHT?

14 **A.** EXACTLY. I TOOK A LOOK AT THE SPECIFIC THINGS THAT
15 DR. DEVANBU SAID INFRINGED, AND I SAID, ALL RIGHT, I WILL
16 ASSUME HE'S RIGHT, IS THERE A WAY TO DESIGN AROUND IT?

17 AND THAT'S WHAT I TALKED ABOUT IN MY EXPERT REPORT IN MORE
18 DETAIL.

19 **Q.** BUT DO YOU OR DO YOU NOT AGREE THAT HE'S RIGHT ON WHETHER
20 OR NOT THE WAY ADOBE DOES IT IS ACTUALLY INFRINGING?

21 **A.** IT'S NOT INFRINGING FOR THE REASONS WE HAVE BEEN TALKING
22 ABOUT.

23 **MS. MEHTA:** THANK YOU, DR. WICKER. YOUR HONOR, I
24 PASS THE WITNESS.

25 **THE WITNESS:** THANK YOU.

1 **MR. DINOVO:** MAY I APPROACH, YOUR HONOR?

2 **THE COURT:** YES.

3 (BINDER HANDED TO WITNESS.)

4 **CROSS-EXAMINATION**

5 **BY MR. DINOVO:**

6 **Q.** GOOD AFTERNOON, DR. WICKER.

7 **A.** GOOD AFTERNOON.

8 **Q.** SO WE HAVE MET BEFORE, HAVEN'T WE?

9 **A.** YES.

10 **Q.** YOU'VE TESTIFIED QUITE A NUMBER OF TIMES?

11 **A.** YES.

12 **Q.** APPROXIMATELY HOW MANY?

13 **A.** A COUPLE DOZEN.

14 **Q.** WAS IT OVER 30 WHEN WE LAST SPOKE?

15 **A.** ROUGHLY 30, I THINK.

16 **Q.** AND I THINK YOU INDICATED YOUR RATE WAS \$600 AN HOUR?

17 **A.** YES.

18 **Q.** ALL RIGHT.

19 LET ME JUST ASK YOU, BECAUSE IT SEEMS TO BE A FUNDAMENTAL
20 ISSUE IN THIS CASE, CAN DATA BE GENERATED TWICE?

21 **A.** CERTAINLY DATA CAN BE RECREATED IN DIFFERENT PLACES. IN
22 OTHER WORDS, I CAN GENERATE SOMETHING IN ONE PLACE AND THEN
23 FOLLOW THE SAME ALGORITHM TO GENERATE IT IN ANOTHER PLACE.

24 **Q.** OKAY. THAT'S HELPFUL.

25 AND CAN DATA BE GENERATED IN TWO LOCATIONS? CAN IT BE

1 GENERATED AT SAY ONE SERVER AND GENERATED AT ANOTHER SERVER?

2 **A.** CERTAINLY. IF -- DEPENDS ON WHAT YOU MEAN BY "DATA".

3 LET'S SUPPOSE WE HAVE A SEQUENCE OF NUMBERS. THERE ARE
4 NUMBER GENERATORS THAT ARE DETERMINISTIC. AND IF I OPERATE
5 THEM IN TWO DIFFERENT PLACES, THEY WILL GIVE ME THE SAME
6 NUMBERS GIVEN THE SAME STARTING CONDITIONS.

7 **Q.** OKAY.

8 NOW I JUST WANT TO MAKE SURE I UNDERSTAND THE SCOPE OF
9 YOUR TESTIMONY ABOUT INFRINGEMENT. IF I MISS ANYTHING, PLEASE
10 LET ME KNOW.

11 IS IT ACCURATE TO SAY THAT FOR THE '541 VERSUS
12 ACTIVATION -- I'M SORRY. THE '541 PATENT RELATIVE TO ADOBE'S
13 ACTIVATION TECHNOLOGY, YOU HAVE NO OPINION THAT ANY OF THE
14 DEPENDENT CLAIMS ARE NOT INFRINGED INDEPENDENTLY OF YOUR
15 ANALYSIS OF THE INDEPENDENT CLAIM?

16 **A.** OKAY. SO WHAT I SAID WAS -- WELL, I FOCUSED ON THE FACT
17 THAT CLAIM 1 WAS REQUIRED, AS I UNDERSTAND IT, AND SINCE
18 CLAIM 1 WASN'T INFRINGED, THAT WAS THE CONCLUSION WITH REGARD
19 TO THE DEPENDENT CLAIMS. SO I DIDN'T GO BEYOND THAT.

20 **Q.** OKAY.

21 **A.** IF CLAIM 1 WASN'T THERE, THE OTHERS CAN'T BE THERE.

22 **Q.** OKAY. I UNDERSTAND THAT THAT'S YOUR OPINION. I GUESS I
23 WAS ASKING IF THERE'S ANYTHING ELSE, ASSUMING THE JURY FINDS
24 THAT THERE'S INFRINGEMENT OF CLAIM 1, IS THERE ANYTHING ELSE
25 YOU HAVE TO SAY ABOUT INFRINGEMENT OF THE REMAINING CLAIMS?

1 **A.** WELL, I HAVEN'T TALKED ABOUT IT. I DIDN'T TESTIFY ABOUT
2 IT.

3 **Q.** OKAY. AND THEN LET'S CONTINUE THIS PROCESS FOR THE '670
4 VERSUS ACTIVATION.

5 THERE, THERE'S ONE DEPENDENT CLAIM 52, RIGHT?

6 **A.** YES, SIR.

7 **Q.** IF THE JURY WERE TO FIND THAT CLAIM 45 WERE MET AND
8 INFRINGEMENT, YOU HAVE NO OPINION THAT YOU'RE PREPARED TO PROVIDE
9 THAT CLAIM 52 FOR SEPARATE AND INDEPENDENT REASONS IS NOT
10 INFRINGEMENT?

11 **A.** WELL, I CERTAINLY DIDN'T TALK ABOUT IT. I WOULD BE HAPPY
12 TO ANSWER FURTHER QUESTIONS IF YOU WISH.

13 **Q.** OKAY. YOU DON'T HAVE ANY OF THAT IN YOUR REPORT AND YOU
14 DIDN'T SAY ANYTHING ON DIRECT ABOUT THAT?

15 **A.** I CERTAINLY DIDN'T SAY ANYTHING ON DIRECT. I WOULD HAVE
16 TO CHECK MY REPORT.

17 **Q.** OKAY. AND LET'S CONTINUE THE SEQUENCE BECAUSE I THINK
18 IT'S USEFUL.

19 SO THE '541 RELATIVE TO LIVECYCLE. I UNDERSTAND IT'S YOUR
20 OPINION THAT THERE'S NO INDEPENDENT CLAIM INFRINGEMENT, BUT
21 YOU HAVE NOTHING TO SAY TODAY ABOUT THE DEPENDENT CLAIMS?

22 **A.** BEYOND THE FACT THAT THE INDEPENDENT IS NOT INFRINGED,
23 THAT'S CORRECT.

24 **Q.** OKAY. AND THEN THE SAME IS TRUE FOR '670 VERSUS LIVECYCLE
25 AND '541 VERSUS FLASH, RIGHT?

1 **A.** THAT'S CORRECT.

2 **Q.** LET'S TALK ABOUT YOUR UNDERSTANDING OF THE MEANING OF
3 TOKEN.

4 WHAT SPECIFIC DATA STRUCTURE, IF ANY, IS REQUIRED BY THE
5 COURT'S CONSTRUCTION OF TOKEN AS YOU UNDERSTAND IT?

6 **A.** THE COURT HAS A CLEAR CLAIM CONSTRUCTION THAT SAYS, I'M
7 PARAPHRASING, THERE IS ACCEPTANCE OR REJECTION THAT IS PASSED
8 BACK AND TO THE CLIENT.

9 THERE ARE EXAMPLES -- THERE IS AN EXAMPLE, EXCUSE ME, IN
10 THE WRITTEN DESCRIPTION, BUT I DON'T BELIEVE THERE'S A
11 REQUIRED DATA STRUCTURE.

12 **Q.** OKAY. SO, IF I UNDERSTAND YOUR TESTIMONY OR YOUR
13 UNDERSTANDING AS A PERSON OF ORDINARY SKILL IN THE ART, THERE
14 IS NO REQUIREMENT FOR DUMMY BITS OR PARTICULAR LENGTH OF THE
15 TOKEN?

16 **A.** OKAY. SO WHAT YOU ARE REFERRING TO IS THE EXAMPLE THAT'S
17 GIVEN. I THINK IT WAS 127 DUMMY BITS PLUS ONE ACCEPTANCE OR
18 NONACCEPTANCE -- REJECTION. IT DOESN'T HAVE TO BE EXACTLY
19 THAT, NO.

20 **Q.** IT DOESN'T HAVE TO BE CLOSE TO THAT, DOES IT?

21 **A.** IT HAS TO CONVEY THE SAME INFORMATION. IN OTHER WORDS,
22 HAVE TO BE ACCEPTANCE OR REJECTION EXPLICITLY IN THE TOKEN.

23 **Q.** OKAY. BUT NO SPECIFIC DATA STRUCTURE IS REQUIRED,
24 CORRECT?

25 **A.** NO. NO SPECIFIC LENGTH OR ANYTHING LIKE THAT.

1 Q. OKAY.

2 NOW, I -- I UNDERSTAND YOUR TESTIMONY TO BE THAT WHETHER
3 OR NOT ACCESS IS GRANTED AT THE CLIENT, UNDER CLAIM '541
4 (SIC), IS DEPENDENT ON THE PERMISSION, RIGHT?

5 A. THAT'S CORRECT.

6 Q. AND YOU AGREE WITH ME, DON'T YOU, SIR, THAT IN EACH OF THE
7 ADOBE PRODUCTS, AND IF YOU PREFER WE CAN TAKE THEM ONE AT A
8 TIME, THAT WHAT IS AT THE CLIENT DEFINES THE SCOPE OF RIGHTS
9 THAT THE USER CAN EXERCISE.

10 MS. MEHTA: OBJECTION, COMPOUND.

11 BY MR. DINOVO:

12 Q. ALL RIGHT. YOUR ATTORNEY HAS MADE AN OBJECTION, SO LET'S
13 TAKE THEM ITEM BY ITEM. ALL RIGHT, SIR?

14 OKAY. IN THE LIVECYCLE CONTEXT, DO YOU HAVE AN
15 UNDERSTANDING AS TO WHAT DR. DEVANBU POINTS TO AS THE
16 PERMISSION THAT'S STORED AT THE CLIENT?

17 A. YES.

18 Q. WHAT IS THAT?

19 A. IT'S MY UNDERSTANDING THAT DR. DEVANBU IS SAYING THAT THE
20 KEY THAT COMES FROM THE SERVER AND IS THEN DECRYPTED
21 CONSTITUTES A REGENERATION OF -- OR CREATION OF A PERMISSION.

22 Q. OKAY. AND THAT PERMISSION THAT IS REGENERATED AT THE
23 CLIENT DEFINES THE SCOPE OF RIGHTS OF THAT USER, RIGHT?

24 A. WELL, I SHOULD NOTE I DON'T CONSIDER THAT REGENERATION. I
25 CONSIDER IT SIMPLE DECRYPTION. BUT WHAT IS DECRYPTED DOES,

1 INDEED, THE DEFINE THE SCOPE OF THE RIGHTS.

2 Q. SO FOR EXAMPLE, IT WOULD GIVE A YES OR NO INDICATION AS TO
3 WHETHER THAT USER COULD PRINT, RIGHT?

4 A. THAT WOULD BE AN EXAMPLE OF THE RIGHTS. THAT WOULD BE
5 EITHER ALLOWED OR DISALLOWED. THAT'S CORRECT.

6 Q. IT WOULD GIVE A YES OR NO INDICATION AS TO WHETHER THAT
7 USER COULD EVEN OPEN THE DOCUMENT?

8 A. WELL, THE KEY ALONE WOULD ALLOW OPENING OF THE DOCUMENT.

9 Q. OKAY.

10 AND THERE'S A WHOLE BASKET OF RIGHTS DEFINED IN THE
11 LIVECYCLE SET OF RIGHTS THAT THIS INFORMATION WILL DEFINE A
12 SET OF RIGHTS AS TO WHETHER THAT USER CAN YES OR NO PERFORM
13 EACH THOSE FUNCTIONS, RIGHT?

14 A. THAT'S CORRECT. THERE IS A POLICY, A SET OF POLICIES AND
15 RULES THAT DEFINE WHAT THAT PARTICULAR USER CAN DO WITH THAT
16 DOCUMENT.

17 Q. OKAY. NOW LET'S TURN TO FLASH.

18 DO YOU HAVE AN UNDERSTANDING AS TO WHAT DR. DEVANBU
19 DESCRIBED AS THE PERMISSION IN ADOBE FLASH ACCESS IN FLASH?

20 A. IT'S MY UNDERSTANDING THAT DR. DEVANBU -- ACTUALLY I HEARD
21 HIM TESTIFY THAT THE KEY THAT WAS CREATED AT THE SERVER AND
22 THEN SENT TO THE CLIENT WAS THE PERMISSION.

23 Q. OKAY. BUT IT'S NOT JUST SENT TO THE CLIENT, RIGHT?
24 THERE'S CHANGES MADE TO IT, RIGHT?

25 A. CERTAINLY.

1 AS I MENTIONED, IT'S-- CHANGES MAY NOT BE THE RIGHT WORD.
2 BUT I -- IT'S ENCRYPTED, IT'S PREPARED FOR TRANSMISSION.
3 THERE'S PROBABLY ENCAPSULATION AND IP DATA GRAMS. THERE'S A
4 LOT OF THINGS THAT HAPPEN WHEN YOU TRANSFER SOMETHING OVER THE
5 INTERNET.

6 Q. DO YOU AGREE WITH DR. DEVANBU'S TESTIMONY THAT ONCE DATA
7 IS ENCRYPTED, THE WHOLE POINT IS THAT TO AN INTERCEPTER, IT
8 WOULD BE ESSENTIALLY USELESS?

9 A. THAT IS THE POINT OF THE ENCRYPTION. YOU BASICALLY WANT
10 TO MAKE SURE THAT ANYONE WHO IS LISTENING IN, WHO'S SNIFFING,
11 WHATEVER THE CASE MAY BE, WILL BE GETTING NOTHING USEFUL.

12 Q. OKAY.

13 AND THEN THERE'S A PROCESS AT THE CLIENT UPON RECEIPT THAT
14 WOULD THEN DECRYPT THAT AND EXTRACT THE RELEVANT INFORMATION
15 TO DEFINE A SET OF ACCESS AND USE RIGHTS FOR THAT CLIENT,
16 CORRECT?

17 A. IT IS CORRECT IT WILL BE DECRYPTED -- DEMODULATED,
18 DECRYPTED, THERE'S A NUMBER OF THINGS, AND THEN VARIOUS PIECES
19 WILL BE EXTRACTED AND SENT TO DIFFERENT PROCESSES, FOR
20 EXAMPLE, TO DETERMINE RIGHTS.

21 Q. OKAY. AND THAT INFORMATION WOULD BE, IF YOU WILL, A YES
22 OR A NO AS TO WHETHER THAT USER AS ACCESS RIGHTS TO THAT
23 PARTICULAR PIECE OF CONTENT?

24 A. THE KEY ITSELF WILL PROVIDE ACCESS IN THE EXAMPLES I'VE
25 SEEN. THERE MAY BE OTHER ISSUES, FOR EXAMPLE, WHETHER YOU CAN

1 HIGHLIGHT OR WHETHER YOU CAN PRINT, FOR EXAMPLE, WITH PDF'S.
2 BUT ACTUALLY BEING ABLE TO SEE IT COMES WITH THE KEY.

3 Q. I WAS INTENDING TO TALK ABOUT FLASH.

4 A. FLASH, I AM SORRY.

5 Q. SO IN THE CONTEXT OF FLASH, YOU AGREE WITH ME THAT WHAT IS
6 ULTIMATELY DECRYPTED WILL DEFINE THE SET OF RIGHTS THAT THE
7 USER MAY HAVE TO THE CONTENT?

8 A. YES. I DO AGREE THAT THERE IS A LOT OF DATA THAT DEFINES
9 RIGHTS WITH REGARD TO WHAT CAN BE DONE WITH THAT.

10 Q. OKAY.

11 A. PARTICULAR --

12 Q. FOR EXAMPLE, DID YOU READ MR. JONES' TESTIMONY RELATING TO
13 THE VUDU SERVICE?

14 A. YES.

15 Q. ARE YOU FAMILIAR WITH THAT SERVICE?

16 A. YES. HE DISCUSSED IT IN THE EXCERPTS THAT YOU SHOWED IN
17 COURT.

18 Q. I HAPPEN TO USE THAT SERVICE. I DON'T KNOW IF YOU DO. DO
19 YOU KNOW THAT YOU CAN RENT CONTENT?

20 A. YES.

21 Q. OKAY. SO YOU CAN BASICALLY RENT A MOVIE FOR A PERIOD OF
22 TIME?

23 A. YES.

24 Q. AND IS THE RIGHT -- IS THE PERMISSION THAT'S CONVEYED
25 UNDER DR. DEVANBU'S ANALYSIS IN ENCRYPTED FORM, IS THAT WHAT

1 DEFINES THE LENGTH OF TIME THAT A USER MAY ACCESS?

2 **A.** I ACTUALLY DON'T KNOW HOW THE TIME LIMITATIONS OF VUDU ARE
3 EMBEDDED. IT COULD BE WITHIN THE RULES. THERE COULD BE
4 SEPARATE DATA STRUCTURES.

5 **Q.** OKAY. DO YOU KNOW WHETHER OR NOT THE USER HAS THE RIGHT
6 TO ACCESS ITSELF IS -- WHAT IS -- AMONG WHAT IS CONVEYED
7 BETWEEN THE FLASH ACCESS SERVER AND THE CLIENT?

8 **A.** AGAIN, I DON'T KNOW WHETHER IT'S A SEPARATE LICENSING
9 PIECE OR WHETHER IT'S PART OF THE ORIGINAL KEY AND POLICY THAT
10 LIMITS THE USER'S ACCESS TIME.

11 **Q.** OKAY. BUT YOU DO AGREE THAT WHAT'S TRANSMITTED BETWEEN
12 THE SERVER AND THE CLIENT, AND WHAT DR. DEVANBU'S IDENTIFYING
13 AS THE TOKEN, WILL GIVE A YES OR NO INDICATION AS TO WHETHER
14 THAT USER CAN ACCESS THE PREMIUM CONTENT IN THE VUDU PROCESS?

15 **A.** I MUST ADMIT I DIDN'T HEAR DR. DEVANBU TALKING ABOUT THIS
16 SPECIFIC QUESTION, BUT WITH REGARD TO HOW MUCH TIME, FOR
17 EXAMPLE, YOU CAN SPEND WATCHING THE VIDEO, THAT WILL BE
18 SOMEHOW SENT TO THE CLIENT AND WILL BE SOMEHOW LOCKED IT IN IN
19 A SECURE WAY.

20 **Q.** AND THEN SO THERE IS AN INSTALLATION PROCESS AT THE
21 CLIENT, IS THERE NOT, THAT WILL STORE THAT INFORMATION?

22 **A.** YES.

23 **Q.** OKAY. AND YOU UNDERSTAND THERE TO BE AN INSTALLATION
24 REQUIREMENT IN THE '541 CLAIM, RIGHT?

25 **A.** YES, I DO.

1 Q. OKAY.

2 I'M NOT SURE WE TALKED ABOUT ACTIVATION IN THIS SERIES OF
3 QUESTIONS. SO, DO YOU HAVE AN UNDERSTANDING AS TO WHAT
4 DR. DEVANBU IDENTIFIES AS THE TOKEN THAT IS TRANSMITTED
5 BETWEEN THE SERVER AND THE CLIENT?

6 A. YES. IT'S MY RECOLLECTION THAT, ONCE AGAIN, HE'S POINTING
7 TO A FILE, AN ENCRYPTED FILE THAT INCLUDES A KEY.

8 Q. OKAY. AND IS THAT FILE DECRYPTED UPON RECEIPT BY THE
9 CLIENT?

10 A. YES, IT IS.

11 Q. OKAY. AND DOES THE ENCRYPTED FILE DEFINE WHETHER OR NOT
12 THAT PARTICULAR USER OR MACHINE HAS A YES OR NO RIGHT TO
13 ACCESS THAT PROTECTED CONTENT?

14 A. THE KEY THAT IS PROVIDED IS WHAT'S USED TO ACCESS. SO THE
15 PRESENCE OF THE KEY PROVIDES THE ACCESS. IT'S NOT AN
16 ACCEPTANCE OR REJECTION, IT'S SIMPLY THE KEY.

17 Q. WHAT IF THE KEY IS IMPROPER OR EMPTY? WILL THE USER BE
18 PROVIDED ACCESS OR NOT?

19 A. WELL, IF THE KEY HAS BEEN CORRUPTED, NO. THERE'S LOTS OF
20 WAYS THAT THE PROCESS CAN FAIL. BUT LET'S JUST SUPPOSE, YOU
21 KNOW, THAT A BIT'S BEEN FLOAT (PHONETIC) THEN, NO, IT'S NOT
22 GOING TO WORK.

23 Q. WHAT'S NOT --

24 A. BY ACCIDENT, THERE'S LOTS OF REASONS THAT COULD HAPPEN.

25 Q. OR IT COULD BE THAT THE PERSON IS NOT AUTHORIZED AND THAT

1 WAS THE INTENDED RESPONSE FROM THE SERVER, RIGHT?

2 **A.** WELL, THEY WOULDN'T SEND A KEY IF THE PERSON HAD BEEN
3 DENIED FOR WHATEVER REASON.

4 **Q.** OKAY. WHAT WOULD THEY SEND?

5 **A.** EITHER A MESSAGE OR NOTHING.

6 **Q.** ALL RIGHT. SO IN THAT CONTEXT, THE PRESENCE OF THE KEY IS
7 AN INDICATION OF YES, ACCESS IS GRANTED, CORRECT?

8 **A.** IT WOULD BE IMPLICIT, BUT IT WOULD NOT BE AN EXPLICIT
9 ACCEPTANCE OR REJECTION.

10 **Q.** DR. WICKER, YOU READ CODE, RIGHT?

11 **A.** YES.

12 **Q.** OKAY. HOW LONG, DO YOU KNOW, THAT THE ADOBE CODE WAS MADE
13 AVAILABLE FOR INSPECTION AND REVIEW BY TECHNICAL EXPERTS IN
14 THIS CASE?

15 **A.** I AM SORRY, I DON'T RECALL.

16 **Q.** AND YOU NEVER ACTUALLY MADE IT OVER TO THE REVIEW
17 FACILITY, DID YOU?

18 **A.** NO, I DID NOT GO TO THE REVIEW FACILITY.

19 **Q.** SO I TAKE IT YOU SPENT ZERO HOURS REVIEWING SOURCE CODE AT
20 THAT FACILITY?

21 **A.** AT THAT FACILITY, THAT'S CORRECT.

22 **Q.** AND IN TERMS OF THE ANALYSIS SET FORTH IN YOUR REPORT, I
23 SAW IN YOUR SLIDE, YOU SAID YOU REVIEWED SOURCE CODE, BUT YOU
24 DIDN'T CITE ANY SOURCE CODE IN YOUR REPORT, DID YOU?

25 **A.** I BELIEVE I POINTED TO SOME OF DR. DEVANBU'S ANALYSIS OF

1 SOURCE CODE. GENERALLY SPEAKING, I AGREED WITH WHAT HE
2 DESCRIBED THAT SOURCE CODE IS DOING.

3 **Q.** OKAY. SO YOU DON'T QUIBBLE WITH DR. DEVANBU IN ANY
4 PARTICULAR ABOUT THE OPERATION OF THE SOURCE CODE?

5 **A.** NO, THAT'S NOT QUITE WHAT I SAID.

6 WHAT I SAID WAS THAT, YOU KNOW, WHEN HE DESCRIBED A PIECE
7 OF CODE, I AGREED WITH WHAT HE WAS SAYING, AFTER CONFIRMING
8 IT, OF COURSE, WITH ENGINEERS AND MY OWN INITIAL REACTION TO
9 WHAT HE WAS LOOKING AT.

10 THERE ARE SOME THINGS THAT I THINK HE MISSED, AND THAT'S
11 WHAT WE DISCUSSED TODAY.

12 **Q.** OKAY.

13 I MEAN, I UNDERSTAND THAT YOUR ANALYSIS DIFFERS FROM HIS,
14 BUT JUST FOCUSING ON THE SOURCE CODE, YOU CAN'T IDENTIFY ANY
15 ERRORS DR. DEVANBU MADE IN THE ANALYSIS EVEN AFTER CONFERRING
16 WITH ADOBE PERSONNEL?

17 **A.** THAT'S RIGHT. WHEN I LOOKED AT THE SPECIFIC CODE THAT HE
18 LOOKED AT, IT APPEARED TO ME THAT HE WAS DESCRIBING IT
19 CORRECTLY.

20 **Q.** THANK YOU.

21 SO JUST SO WE'RE CLEAR, LET'S TAKE THE PRODUCTS ONE AT A
22 TIME.

23 WITH THE ADOBE ACTIVATION TECHNOLOGY, YOU UNDERSTAND THAT
24 TO RELATE TO THE ALM 2.0 AMT PRODUCT, RIGHT?

25 **A.** THE VOLUME DISTRIBUTION ALM, YES, THAT'S CORRECT.

1 Q. ALL RIGHT. THANK YOU. AND YOU DIDN'T REVIEW THAT CODE?

2 A. ONLY THE PORTIONS THAT WERE POINTED TO BY DR. DEVANBU.

3 Q. THE SAME QUESTION FOR FLASH AND FOR LIVECYCLE; YOU LOOKED
4 AT WHAT DR. DEVANBU SAID AND YOU AGREED WITH IT, OR YOU AGREED
5 WITH HIS INTERPRETATION OF THE CODE BUT YOU DIDN'T LOOK AT
6 ANYTHING ELSE?

7 A. BEFORE WE GO ON, I ASSUME YOU ARE ASKING ME WITH REGARD TO
8 UP UNTIL THE TIME I WROTE MY REPORT AND SUBMITTED IT. I HAVE
9 HAD AN OPPORTUNITY TO LOOK AT CODE SINCE THEN.

10 Q. OKAY.

11 A. ARE YOU ASKING UP UNTIL THE SPECIFIC POINT IN TIME.

12 Q. YEAH, I THINK WE SHOULD LIMIT YOUR TESTIMONY TO WHAT YOU
13 SAID IN YOUR REPORT AND DEPOSITION.

14 A. OKAY.

15 Q. NOW, YOU DID HAVE AN OPPORTUNITY, DID YOU NOT, SIR, TO
16 REVIEW THE TESTIMONY OF MR. JONES?

17 A. YES, I DID.

18 Q. DO YOU RECALL WHAT THE SUBJECT MATTER OF HIS TESTIMONY
19 WAS?

20 A. YES. IN FACT, SOME OF IT WAS PLAYED HERE IN COURT.

21 Q. OKAY. IT WAS FLASH, RIGHT?

22 A. EXACTLY.

23 Q. FLASH ACCESS?

24 A. FLASH ACCESS.

25 Q. SO YOU AGREE WITH MR. JONES, OR DO YOU DISPUTE THAT THE

1 FLASH ACCESS DEFAULT RULES USE A POLICY WHICH IS A CONTAINER
2 FOR THE RULES AND RESTRICTIONS THAT DETERMINE HOW, WHEN AND
3 WHERE PROTECTED CONTENT CAN BE USED BY CONSUMERS?

4 **A.** YES. THAT'S MY UNDERSTANDING AS WELL. I HAVE NO REASON
5 TO DISPUTE HIM ON THAT.

6 **Q.** SO THAT SOUNDS TO ME MORE ROBUST THAN YES OR NO, RIGHT?
7 IT'S DEFINING A WHOLE SET OF CONDITIONS; HOW, WHEN, AND WHERE.

8 **A.** IT IS TRUE THERE ARE A LOT OF RULES THAT ARE POTENTIALLY
9 INVOKED.

10 **Q.** AND AMONG THEM ARE YES OR NO.

11 **A.** WELL, AGAIN, THE PRESENCE OF THE ENCRYPTED KEY GIVES
12 ACCESS. SO THERE'S NO, YOU KNOW, YES, YOU HAVE ACCESS, NO,
13 YOU DON'T. THAT IS THE KEY. THE KEY GIVES YOU THE ACCESS.
14 SO IT IS IMPLICITLY A YES.

15 **Q.** WELL --

16 **A.** THE RULES INVOLVE HOW YOU CAN DEAL WITH THE PROTECTED
17 CONTENT.

18 **Q.** I'M SORRY, I DIDN'T MEAN TO INTERRUPT.

19 SO IN ADDITION TO THE KEY IS THE DEFINITION OF A HOST OF
20 PERMISSIONS THAT WE JUST OUTLINED IN DR. JONES' ADOBE'S
21 CORPORATE REPRESENTATIVE IDENTIFIED, RIGHT?

22 **A.** THAT'S CORRECT.

23 **Q.** DO YOU AGREE WITH ME THAT FLASH ACCESS IS DESIGNED TO HAVE
24 TWO STEPS?

25 I WILL JUST HELP YOU OUT, OR TRY TO. CONTENT PREPARATION

1 AND CONTENT ACQUISITION, DOES THAT RING A BELL?

2 A. YES. YES.

3 Q. NOW FOR THE ACQUISITION OF PROTECTED CONTENT, A REQUEST
4 CAN BE MADE TO A LICENSING SERVER FOR A LICENSE TO THE
5 PROTECTED CONTENT, RIGHT?

6 A. THAT'S CORRECT.

7 Q. AND THAT REQUEST WOULD USE INFORMATION SUCH AS A MACHINE
8 I.D.?

9 A. POTENTIALLY, NOT NECESSARILY.

10 Q. OKAY.

11 A. DEPENDS ON HOW IT'S BEEN -- I'M SORRY. IT DEPENDS ON HOW
12 IT WAS CONFIGURED. IT COULD USE THE MACHINE I.D.

13 Q. AND IN RESPONSE, THE LICENSING SERVER GENERATES A LICENSE
14 CONTAINING A CONTENT ENCRYPTION KEY FOR THAT PROTECTED
15 CONTENT.

16 A. YES. THE SERVER GENERATES THE ENCRYPTION KEY. THAT'S
17 CORRECT.

18 Q. THE LICENSE SERVER ENCRYPTS THE CONTENT ENCRYPTION KEY?

19 A. THAT'S CORRECT.

20 Q. SO THAT IF IT IS INTERCEPTED, IT WON'T BE USED BY SOMEONE
21 OTHER THAN THE INTENDED RECIPIENT?

22 A. THAT SPEAKS TO THE INTENT. THERE MAY BE OTHER REASONS FOR
23 ENCRYPTING. BUT CERTAINLY ONE OF THE BENEFITS OF ENCRYPTING
24 BEFORE TRANSMISSION IS TO PREVENT AN UNAUTHORIZED USER FROM
25 ACCESSING THE MATERIAL.

1 Q. YOU AGREE THAT IT'S NECESSARY TO DECRYPT THE CONTENT
2 ENCRYPTION KEY BEFORE THE USER CAN ACCESS THE PROTECTED
3 CONTENT?

4 A. THAT'S CORRECT.

5 Q. AND THE CEK OR CONTENT ENCRYPTION KEY WOULD THEN BE STORED
6 LOCALLY AT THE CLIENT?

7 A. THAT ALSO DEPENDS ON THE RULES. BUT IT COULD BE STORED.
8 IT MIGHT NOT BE STORED. BUT IT WOULD BE USED TO ACCESS THE
9 CONTENT.

10 Q. OKAY. BUT YOU AGREE WITH ME IT CAN BE STORED CONSISTENT
11 WITH THE ADOBE FLASH ACCESS PLATFORM?

12 A. THAT'S RIGHT. THAT IS ONE OF THE POSSIBLE CONFIGURATIONS.

13 Q. DO YOU AGREE -- I AM SORRY, SIR?

14 A. I WAS AGREEING WITH YOU.

15 Q. DO YOU AGREE THAT THE FLASH ACCESS SDK IS GENERALLY USED
16 FOR BUILDING UP A LICENSING SERVER?

17 A. I MISSED THE WORDS IN THE MIDDLE THERE. IT'S BEING USED
18 TO?

19 Q. BUILD UP A LICENSING SERVER.

20 A. YES, EXACTLY. THAT'S WHAT IT'S FOR.

21 Q. AND THAT SERVER IS THE FLASH LICENSE SERVER?

22 A. ONCE IT IS SUBSTANTIATED, YES.

23 Q. AND THE LICENSE IS GENERATED OR CAN BE GENERATED WHEN A
24 USER REQUESTS CONTENT?

25 A. THAT'S CORRECT.

1 Q. AND DO YOU AGREE, SIR, THAT IN THE FLASH ARCHITECTURE AN
2 ATTEMPT TO ACCESS CONTENT BY A CUSTOMER MAY RESULT IN A
3 TRANSMISSION TO THE LICENSING SERVER?

4 A. YES, THAT'S CERTAINLY TRUE.

5 Q. AND THAT LICENSE CAN BE BOUND TO A SPECIFIC MACHINE.

6 A. IT CAN BE. NOT NECESSARILY, BUT IT CAN BE.

7 Q. AND THAT MACHINE CAN BE ONE ASSOCIATED A FLASH PLAYER OR
8 AIR ONE TIME?

9 A. YES.

10 Q. DOES ADOBE RECOMMEND TO CUSTOMERS THAT THEY SHOULD SET THE
11 DEFAULT POLICY THAT ITS PACKAGE WITH CONTENT TO BE AS
12 RESTRICTIVE AS POSSIBLE AND THEN LOOSEN THOSE RESTRICTIONS AT
13 THE TIME OF LICENSE ISSUANCE?

14 MS. MEHTA: OBJECTION, OUTSIDE THE SCOPE.

15 THE COURT: IN WHICH PRODUCT IS THIS?

16 MR. DINOVO: I'M REFERRING TO THE FLASH ACCESS
17 SITUATION. AND SPECIFICALLY THIS WAS --

18 THE COURT: OVERRULED.

19 MR. DINOVO: I'M SORRY?

20 THE COURT: OVERRULED.

21 MR. DINOVO: THANK YOU.

22 THE WITNESS: AS I RECALL, THAT QUESTION WAS ASKED OF
23 MR. JONES. AND I BELIEVE HE AGREED, BUT I WOULD HAVE TO CHECK
24 HIS TRANSCRIPT TO BE SURE.
25

1 **BY MR. DINOVO:**

2 **Q.** AND IF MR. JONES -- I'LL REPRESENT TO YOU I WAS READING
3 MR. JONES TESTIMONY.

4 SO YOU DON'T HAVE ANY REASON TO DIFFER?

5 **A.** NO, I DON'T HAVE ANY REASON TO DIFFER.

6 **Q.** YOU DON'T HAVE ANY REASON TO DIFFER WITH MR. JONES, DO
7 YOU, THAT VUDU IS ONE OF THE ADOBE CUSTOMERS THAT IMPLEMENTS
8 FLASH ACCESS IN A WAY SUCH AS TO CACHE LICENSES AT THE USER'S
9 MACHINES?

10 **A.** I BELIEVE THAT'S WHAT HE SAID. I DO RECALL HEARING THAT.

11 **Q.** OKAY. DO YOU RECALL HIM SAYING THAT IN THE VUDU
12 IMPLEMENTATION, HE KNOWS THAT THERE IS AN ACCESS TO THE CACHE
13 TO MAKE SURE THAT -- OR TO CHECK WHETHER OR NOT THE LICENSE'S
14 PRESENT BEFORE COMMUNICATING TO THE SERVER?

15 **A.** I DON'T RECALL HIM SAYING THAT. BUT IF HE DID, I HAVE NO
16 REASON TO DISPUTE IT.

17 **Q.** WOULD YOU LIKE TO SEE HIS TESTIMONY, SIR?

18 **A.** THAT WOULD BE HELPFUL.

19 **Q.** ALL RIGHT.

20 IF YOU COULD REFER TO JONES, IT'S IN YOUR BINDER IN YOUR
21 HAND.

22 JONES DEPOSITION, PAGE 58, LINES 8 THROUGH 16.

23 **MR. DINOVO:** DOES YOUR HONOR NEED A COPY?

24 **THE WITNESS:** I AM SORRY, WHAT WERE THE LINES AGAIN?

25 I'M ON 58.

1 **BY MR. DINOVO:**

2 **Q.** 8 THROUGH 16.

3 **A.** YES, I AGREE WITH YOUR CHARACTERIZATION.

4 **Q.** THANK YOU.

5 LET'S LOOK AT A DOCUMENT THAT YOU REFERENCED WITH
6 MS. MEHTA ON DIRECT. DEFENDANT'S EXHIBIT 360.

7 DO YOU STILL HAVE YOUR BINDER FROM HER DIRECT?

8 **A.** YES, I DO.

9 (PUBLISHED TO JURY.)

10 OKAY I'M THERE.

11 **MR. DINOVO:** I BELIEVE DEFENDANT'S EXHIBIT 360 WAS
12 PREVIOUSLY ADMITTED?

13 **THE CLERK:** IT WAS.

14 **MR. DINOVO:** THANK YOU.

15 ALL RIGHT. MS. MASON, IF YOU CAN PLEASE TURN TO 360, 13.
16 AND IF YOU CAN PLEASE BLOW UP THE FIRST MAIN HEADING
17 THERE.

18 YES, THANK YOU.

19 **BY MR. DINOVO:**

20 **Q.** NOW, DO YOU SEE HERE, SIR, IN CONNECTION WITH THE
21 LIVECYCLE RIGHTS MANAGEMENT A WHOLE HOST OF PERMISSIONS
22 ASSOCIATED WITH LIVECYCLE?

23 **A.** THAT'S RIGHT. SPECIFICALLY WHAT'S BEING DESCRIBED HERE
24 ARE ALL OF THE THINGS THAT ARE -- THE DIFFERENT TYPES OF
25 PERMISSIONS THAT ARE ASSOCIATED WITH THE EDC VOUCHER THAT'S

1 REFERENCED IN THE FIRST LINE.

2 Q. LET'S ACTUALLY READ IT OUT LOUD IF YOU DON'T MIND.

3 "WHEN A USER REQUESTS ACCESS TO A DOCUMENT, AN EDC VOUCHER
4 OBJECT IS RETURNED", RIGHT?

5 A. YES.

6 Q. YOU UNDERSTAND THAT TO BE THAT WHICH DR. DEVANBU
7 IDENTIFIES AS THE TOKEN?

8 A. THAT'S CORRECT.

9 Q. AND THEN IT SAYS, "THIS OBJECT CAN BE USED TO OBTAIN THE
10 SET OF PERMISSIONS."

11 SO, HOW WAS IT USED TO OBTAIN THE SET OF PERMISSIONS? DO
12 YOU HAVE AN UNDERSTANDING OF THAT?

13 A. THE PERMISSIONS ARE EXTRACTED FROM THE OBJECT.

14 Q. WELL, THE OBJECT IS FIRST DECRYPTED, RIGHT?

15 A. YES.

16 Q. OKAY. IT'S DECRYPTED AND THEN THAT SET OF PERMISSIONS IS
17 USED TO GENERATE -- OR THAT DECRYPTED OBJECT, THE EDC VOUCHER
18 IS THEN USED TO GENERATE THE SET OF PERMISSIONS, CORRECT?

19 A. THAT'S CORRECT.

20 Q. AND THOSE ARE AT THE CLIENT?

21 A. THEY ORIGINATE AT THE SERVER, BUT THEN THEY ARE SENT TO
22 THE CLIENT.

23 Q. THEY ARE SENT TO THE CLIENT IN ENCRYPTED FORM. THEY ARE
24 DECRYPTED. AND ACCORDING TO ADOBE'S OWN DOCUMENTATION, THEY
25 ARE USED TO OBTAIN THE SET OF PERMISSIONS, RIGHT?

1 **A.** THAT'S CORRECT.

2 **Q.** SO THE SET OF PERMISSIONS IS NOT THE EDC VOUCHER?

3 **A.** EDC VOUCHER CONTAINS THE PERMISSIONS. AND THE PERMISSIONS
4 ORIGINATE AT THE SERVER. THEY ARE EXTRACTED OR OBTAINED FROM
5 THE OBJECT THAT IS DECRYPTED AT THE CLIENT.

6 **Q.** OKAY.

7 DO YOU AGREE WITH ME, SIR, THAT THE TOKEN IS USED IN THE
8 CONTEXT OF THE '541 PATENT AS AN INPUT TO GENERATE THE
9 PERMISSION?

10 **A.** WOULD YOU MIND IF I GET UP? I CAN'T SEE.

11 **Q.** I DON'T MIND AT ALL.

12 **A.** OKAY.

13 **Q.** I'M SORRY, I DIDN'T APPRECIATE THAT ANGLE.

14 IF YOU WOULD LIKE --

15 **A.** I AM SORRY.

16 **Q.** IF YOU WOULD LIKE, WE CAN MOVE IT CLOSER TO YOU.

17 **THE COURT:** OR GET A COPY OF THE PATENT AND YOU CAN
18 LOOK AT IT ON THE PIECE OF PAPER.

19 **MR. DINOVO:** THAT IS A BETTER IDEA.

20 IF YOU CAN HAVE A SEAT.

21 IF WE CAN CALL UP PLAINTIFF'S EXHIBIT 1. I DON'T KNOW
22 WHAT PAGE CLAIM 1 WOULD BE ON.

23 (PAUSE IN THE PROCEEDINGS.)

24 **THE COURT:** MAYBE THAT WAS MORE TROUBLE THAN IT WAS
25 WORTH. I WAS THINKING A PIECE OF PAPER.

1 **MR. DINOVO:** MAY I APPROACH, YOUR HONOR?

2 **THE COURT:** YEAH.

3 (EXHIBIT HANDED TO WITNESS.)

4 **THE WITNESS:** WOULD YOU MIND REPEATING THE QUESTION?

5 **BY MR. DINOVO:**

6 **Q.** I DON'T KNOW THAT THERE WAS ONE PENDING. I WAS JUST
7 WAITING FOR YOU TO GET YOUR BEARINGS.

8 **A.** I'M THERE.

9 **Q.** OKAY. I HAVE HANDED YOU A PAPER COPY OF PLAINTIFF'S
10 EXHIBIT 1, WHICH IS THE '541 PATENT. IS THAT WHAT YOU HAVE IN
11 YOUR HAND THERE?

12 **A.** YES.

13 **Q.** AND I WAS FOCUSING ON THE FINAL ELEMENT OF CLAIM 1.

14 BASED ON THE RECEIVED TOKEN, EXECUTING AN INSTALLATION
15 PROCESS THAT GENERATES AT THE CLIENT A PERMISSION.

16 ALL RIGHT? AND MY QUESTION WAS, DON'T YOU AGREE WITH ME
17 THAT THE TOKEN IS USED AS AN INPUT CHIP TO GENERATE A
18 PERMISSION?

19 **A.** NO. I THINK THAT THAT WOULD BE MISLEADING. BECAUSE IF
20 YOU READ THROUGH THE PATENT, WHAT IT SAYS IS THE TOKEN IS
21 SIMPLY A YES NO. IT'S BINARY, IN FACT, AS THE SINGLE EXAMPLE
22 THAT'S PROVIDED IT SHOWS. SO IT'S SIMPLY INDICATING WHETHER
23 OR NOT YOU CAN GO THROUGH THIS PROCESS.

24 "BASED ON THE RECEIVED TOKEN" MEANS BASED ON WHETHER WE
25 CAN DO THIS OR NOT, NOT THAT THE TOKEN IS AN INPUT TO THE

1 PROCESS.

2 Q. SO IN FORMING YOUR OPINION, DID YOU APPLY A CONSTRUCTION
3 OF TOKEN THAT LIMITED IT TO A ONE BIT YES OR NO?

4 A. NO. I LIMITED IT TO THE COURT'S CLAIM CONSTRUCTION, WHICH
5 SAID ACCEPTANCE OR REJECTION, BASICALLY, YES OR NO.

6 Q. IS IT YOUR TESTIMONY OR OPINION THAT IF ADDITIONAL
7 INFORMATION IS PROVIDED, THAT SOMEHOW THERE IS NO
8 INFRINGEMENT?

9 A. NO. MY TESTIMONY WOULD BE THAT THAT LANGUAGE HAS TO BE
10 SATISFIED. IF THERE'S OTHER MATERIAL, IT DEPENDS ON WHAT IT
11 IS. IT DEPENDS ON WHETHER THE PRESENCE OF THAT MATERIAL
12 CONTRADICTS, FOR EXAMPLE, WHETHER THIS IS BEING DONE AT THE
13 CLIENT OR BEING DONE AT THE SERVER.

14 AND I THINK IN THE PRESENT INSTANCE, WE'RE SEEING A CASE
15 IN WHICH IT'S BEING DONE AT THE SERVER, BUT WE ARE SIMPLY
16 ENCRYPTING AND PASSING IT ON SO THE CLIENT CAN THEN PROCESS
17 AND EXTRACT IT.

18 Q. SIR, DON'T YOU AGREE WITH ME THAT THE EXPLICIT LANGUAGE OF
19 THE CLAIM REFERS TO RECEIVING FROM AN EXTERNAL SOURCE A TOKEN,
20 RIGHT? SO YOU ARE BRINGING A TOKEN TO THE CLIENT?

21 A. THAT'S CORRECT.

22 Q. BASED ON THAT TOKEN, THE GENERATION OF A PERMISSION.

23 A. I DO AGREE THAT IT'S -- I AM SORRY.

24 Q. I THINK I INTERRUPTED YOU.

25 A. I WAS ABOUT TO SAY I DO AGREE IT SAYS THAT.

1 Q. OKAY.

2 SO, WHY IS IT YOUR OPINION THEN THAT THE TOKEN IS NOT USED
3 AS AN INPUT TO THE PROCESS FOR THE GENERATION OF A PERMISSION?

4 A. WELL, FIRST OFF, THE LANGUAGE, RECEIVING FROM THE EXTERNAL
5 SOURCE A TOKEN, AND BASED ON THE RECEIVED TOKEN, NOT USING THE
6 RECEIVED TOKEN, BUT BASED ON THE RECEIVED TOKEN.

7 THEN I READ THE PATENT, AND IT TELLS ME IN THE ONE EXAMPLE
8 IT HAPPENS TO BE A YES OR NO. I LOOK AT THE COURT'S CLAIM
9 CONSTRUCTION, WHICH COVERS OTHER EXAMPLES, OF COURSE, BUT IT
10 ALSO SAYS ACCEPTANCE OR REJECTION.

11 SO, TO ME, BASED ON MEANS IF ALLOWED TO EXECUTE AN
12 INSTALLATION PROCESS.

13 Q. DID YOU SEE DR. DEVANBU'S SIMPLE EXAMPLE, I THINK IT WAS
14 SOMETHING LIKE THE DEFEND THE EAST CASTLE WALL?

15 A. YES, FROM THE VERY BEGINNING.

16 Q. DON'T YOU AGREE WITH ME THAT THAT MESSAGE, DEFEND THE EAST
17 CASTLE WALL, IS BASED ON THE ENCRYPTED MESSAGE?

18 A. YES. HE SHOWED AN EXAMPLE OF, I THINK IT WAS A SIMPLE
19 SUBSTITUTION CIPHER IN WHICH WHAT APPEARED TO BE NONSENSE
20 BECAME DEFEND THE EAST CASTLE WALL, OR SOMETHING LIKE THAT.

21 Q. THANK YOU.

22 CONTINUING THE ANALYSIS OF LIVECYCLE, SIR.

23 MR. DINOVO: OH, BEFORE WE TURN AWAY THIS EXHIBIT,
24 COULD YOU, MS. MASON, PLEASE PULL UP 360.012 AND THE EVENT
25 LOGGING.

(PUBLISHED TO JURY.)

BY MR. DINOVO:

Q. DO YOU HAVE AN UNDERSTANDING, SIR, BASED ON YOUR ANALYSIS IN THIS CASE WHAT THE EVENT LOGGING FEATURES ARE OF ADOBE LIVECYCLE?

A. YES.

Q. WHAT IS IT?

A. BASICALLY IT'S A MEANS FOR KEEPING TRACK OF VARIOUS PROCESSES AS THEY ARE EXECUTED AND RECORDING THAT THEY HAVE BEEN EXECUTED.

Q. INCLUDING ACCESS TO PROTECTED DOCUMENTS?

A. FOR EXAMPLE, YES.

Q. DO YOU AGREE WITH ME, SIR, THAT WHEN A USER WANTS TO UTILIZE A PROTECTED DOCUMENT, THEY FIRST HAVE TO LOG INTO THE ADOBE DIGITAL RIGHTS MANAGEMENT SERVICE?

A. AND WE ARE SPECIFICALLY TALKING ABOUT LIVECYCLE?

Q. YES, SIR.

A. YES.

Q. AND LET'S TAKE THE SITUATION OF A PROTECTED PDF. ALL RIGHT?

A. OKAY.

Q. DO YOU AGREE WITH ME THAT IF A USER -- A FIRST LIVECYCLE USER WHO HAD NO RIGHTS TO VIEW CONTENT SENT IT TO A SECOND USER WHO HAD NO RIGHTS, THE SECOND USER WOULDN'T BE ABLE TO ACCESS IT EITHER, RIGHT?

1 **A.** IF THE SECOND USER DID NOT HAVE ACCESS RIGHTS, THEY
2 WOULDN'T BE ABLE TO SEE IT.

3 **Q.** OKAY. AND IN THAT CONTEXT, WOULD THAT MEET THE
4 REQUIREMENT OF SUCCESSIVE RECIPIENT?

5 **A.** I THINK IN YOUR HYPOTHETICAL, DIDN'T YOU START BY SAYING
6 THE FIRST USER?

7 CAN WE SEE THE CLAIM LANGUAGE? I THINK IT REQUIRES A BIT
8 MORE THAN WHAT YOU'RE DESCRIBING.

9 **Q.** WOULD YOU RATHER HAVE THE COURT'S CLAIM CONSTRUCTION?

10 **A.** I WOULD LIKE TO START WITH THE CLAIM.

11 **Q.** ALL RIGHT.

12 **MR. DINOVO:** IF WE CAN BRING UP PLAINTIFF'S
13 EXHIBIT 3.

14 **THE WITNESS:** THIS IS THE CONTEXT IN WHICH YOU ARE
15 ASKING THE QUESTION.

16 **BY MR. DINOVO:**

17 **Q.** YES, SIR, THAT'S CORRECT.

18 I THINK WE ARE TRYING TO GET IT UP ON THE SCREEN FOR YOU.
19 YOU HAVE ONE IN FRONT OF YOU, OF COURSE.

20 (PUBLISHED TO JURY.)

21 OKAY. LET ME JUST BACK UP AND SEE IF YOU AGREE OR
22 DISAGREE WITH DR. DEVANBU'S COMMENT THAT HE THINKS IT'S A
23 REASONABLE USE CASE THAT A CORPORATION, FOR EXAMPLE, WOULD USE
24 LIFECYCLE INTERNALLY WITHIN ITS FIREWALL.

25 **A.** IT'S CERTAINLY POSSIBLE.

1 Q. OKAY. SO LET'S USE THAT EXAMPLE.

2 COMPANY X. EMPLOYEE 1 PUTS A PROTECTED PDF ON A FLASH
3 DRIVE AND HANDS IT TO EMPLOYEE 2.

4 A. OKAY.

5 Q. LET'S ASSUME THIS IS AN INTERNAL DOCUMENT, NEITHER OF
6 WHICH EMPLOYEE HAS THE RIGHTS UNDER THE POLICY TO VIEW.

7 IS THE SECOND PERSON WHO GETS IT A SUCCESSIVE RECIPIENT
8 WITHIN THE MEANING OF THE COURT'S CLAIM CONSTRUCTION?

9 A. OKAY. SO THIS IS A HYPOTHETICAL, AS I UNDERSTAND IT,
10 BECAUSE THERE IS NO EVIDENCE THAT THIS SORT OF THINGS HAPPENS.

11 BUT CERTAINLY THE SECOND PERSON TO RECEIVE IT -- THE FIRST
12 PERSON RECEIVED IT, THEN THE SECOND PERSON RECEIVED IT. THE
13 SECOND PERSON WOULD BE A SUCCESSIVE RECIPIENT.

14 Q. OKAY.

15 AND YOU AGREE THAT IF THE FIRST LIVECYCLE USER HAS NO
16 RIGHTS TO VIEW CONTENT AND PASSES IT TO A SECOND USER WITH THE
17 SAME RIGHTS, THEN THE SECOND USER WOULD HAVE NO TECHNICAL
18 CAPABILITY TO VIEW THE CONTENT.

19 A. SO IF THE SECOND USER DID NOT HAVE RIGHTS OF ACCESS, THEY
20 WOULD NOT BE ABLE TO VIEW IT.

21 Q. ALL RIGHT.

22 DO YOU AGREE WITH ME THAT IF A RECIPIENT OF A LIVECYCLE
23 DOCUMENT IS DENIED ACCESS AND PASSES IT TO A SUCCESSIVE
24 RECIPIENT, THAT PERSON WOULD ALSO BE DENIED ACCESS?

25 A. NOT NECESSARILY.

1 Q. IT DEPENDS ON WHETHER THAT PERSON, THE SECOND PERSON HAS
2 RIGHTS?

3 A. THAT'S CORRECT.

4 THE COURT: WHY DON'T WE BREAK FOR THE DAY. IT'S
5 3:30.

6 SO TOMORROW IS FRIDAY. WE'LL GO BACK ON OUR 8:30 TO
7 1:30 SCHEDULE. SO WE'LL START AT 8:30 TOMORROW.

8 REMEMBER NOT TO DISCUSS THE CASE AMONGST YOURSELVES OR
9 WITH ANYONE ELSE OVER THE BREAK. LEAVE YOUR NOTES IN THE JURY
10 ROOM, AND WE'LL SEE YOU TOMORROW MORNING AT 8:30. THANKS FOR
11 ACCOMMODATING OUR SCHEDULE TODAY.

12 YOU MAY STEP DOWN, SIR, AND WE WILL NEED YOU BACK AT
13 8:30 UNLESS THEY HAVE SOME OTHER AGREEMENT.

14 I WOULD LIKE TO SEE THE ATTORNEYS FOR JUST A MINUTE.

15 (PROCEEDINGS HELD OUTSIDE THE PRESENCE OF THE JURY.)

16 THE COURT: I HAD GIVEN YOU A PROPOSED VERDICT FORM
17 AND I GOT A RESPONSE FROM THE PLAINTIFF. SO I DON'T KNOW IF
18 YOU HAD ANY COMMENT ON THAT OR IF YOU WANT TO FILE SOMETHING.

19 MR. REINES: WE CAN FILE SOMETHING TONIGHT, IF THAT'S
20 ALL RIGHT.

21 THE COURT: OKAY. I GUESS WE CAN WAIT AND SEE, BUT
22 IT SEEMS AS THOUGH WE NEED TO TAKE OUT THE DIRECT INFRINGEMENT
23 BOXES ON THE '541.

24 MR. REINES: THAT'S RIGHT.

25 MR. DINOVO: YES, YOUR HONOR.

1 **THE COURT:** OKAY.

2 **MR. REINES:** YOUR HONOR, ONE IMPORTANT ISSUE.

3 WE HAD THE OPPORTUNITY DURING THE COURT DAY TODAY TO LOOK
4 AT WHAT WAS PRODUCED TO US THIS TIME REGARDING THE ADOBE VALUE
5 PROPOSITIONS DOCUMENT, WHICH HAS BEEN MARKED AS EXHIBIT 125A,
6 B, C AND D.

7 **THE COURT:** YES.

8 **MR. REINES:** AND VERY DISTURBINGLY WE HAVE FOUND THAT
9 THERE'S TWO OTHER VERSIONS FROM THE TIME PERIOD. AND ONE OF
10 THEM DOES NOT HAVE THE '670 PATENT ON IT. SO THERE'S MULTIPLE
11 VERSIONS THAT WEREN'T PRODUCED.

12 AND IT'S VERY DISTURBING TO US BECAUSE COUNSEL REPRESENTED
13 TO YOU YESTERDAY THAT THEY CHECKED, AND THAT IT WAS ONE
14 DOCUMENT, AND THERE WAS EITHER A BUBBLE OR NOT A BUBBLE, AND
15 THAT IT WAS ALL THE SAME DOCUMENT AND ALL WAS WELL AND ALL WAS
16 MUCH ADO ABOUT NOTHING.

17 AND THEY PUT THE WITNESS UP, AND WE DIDN'T HAVE THE
18 OPPORTUNITY TO IMPEACH HIM WITH THE SAME DOCUMENT, WITH THE
19 SAME COMMENT BUBBLE WITHOUT THE '670 PATENT.

20 THAT'S EXTRA IMPORTANT. NOT ONLY BECAUSE THAT'S THEIR
21 ONLY WILLFULNESS THEORY ON THE '670 PATENT, BUT THAT'S
22 IMPORTANT BECAUSE THAT WOULD MEAN THERE'S MULTIPLE, MULTIPLE
23 VERSIONS. IT WOULD BE INCONSISTENT WITH MULTIPLE STORIES
24 WE'VE HEARD AT DIFFERENT POINTS IN TIME. AND WE DIDN'T HAVE
25 THE OPPORTUNITY TO IMPEACH HIM BY SAYING WASN'T THERE A

1 VERSION THAT DIDN'T HAVE THE '670 PATENT ON IT THAT WAS FROM
2 THAT SAME TIME PERIOD. WASN'T THERE THIS OTHER VERSION --

3 **THE COURT:** THEY SAID THERE WERE FOUR VERSIONS. ONE
4 WAS THE '04 VERSION AND THEN THERE WERE THREE SUBSEQUENT
5 VERSIONS. SO IF YOU ARE REFERRING TO ONE OF THE THREE
6 SUBSEQUENT VERSIONS, THAT WOULDN'T BE INCONSISTENT WITH WHAT
7 WAS REPRESENTED.

8 **MR. REINES:** THAT'S TRUE.

9 **THE COURT:** IF THERE'S ANOTHER ORIGINAL '04 VERSION
10 THAT DIDN'T HAVE THE '670, I SUPPOSE THAT WOULD BE SOMETHING
11 ELSE AGAIN.

12 **MR. REINES:** THAT'S WHAT THE SITUATION IS.

13 SO THERE'S TWO -- SO THERE'S NOW SEVEN VERSIONS TO OUR
14 KNOWLEDGE. WE ARE DEALING WITH IT AS WE GET IT. IT'S
15 SHIFTING SANDS FOR US AS MUCH AS IT IS FOR YOU.

16 YES, THERE'S TWO, THE METADATA SHOWS THAT THERE'S THREE.
17 NONE OF THEM ARE IN JUNE. THE TESTIMONY WAS JUNE. SO --
18 DURING TRIAL. SO THE JURY HEARD A JUNE DATE. THAT ISN'T
19 TRUE.

20 AND THERE'S NOW THREE VERSIONS FROM THAT SAME TIME PERIOD,
21 ONE WHICH DOESN'T HAVE THE PATENT AS THEY ARE ARGUING
22 WILLFULNESS ON. AND COUNSEL REPRESENTED TO YOU THAT IT WAS
23 ALL ONE DOCUMENT. MAYBE I'M MISSING SOMETHING ON THIS.

24 **THE COURT:** OKAY. DO YOU HAVE A REQUEST?

25 **MR. REINES:** YES. WE WOULD REQUEST TO TAKE THE

1 DEPOSITION OF MR. VENTERS ON ALL THESE NEW VERSIONS. AND WE'D
2 ALSO -- ADOBE WOULD LIKE TO TAKE THE DEPOSITION OF MS. GLAUSER
3 ON WHAT HER BASIS WAS FOR STATING THAT THERE WAS ONE DOCUMENT
4 AND THAT THIS -- THAT ALL IT WAS WAS A MATTER OF TURNING ON
5 AND OFF THE BUBBLE.

6 **THE COURT:** NO, WE ARE NOT GOING TO DO THAT.

7 DOES VENTER LIVE AROUND HERE?

8 **MR. REINES:** HE LIVES IN MARIN.

9 **MS. GLAUSER:** AND YOUR HONOR --

10 **THE COURT:** HE MENTIONED SOMETHING ABOUT WHERE HE WAS
11 STAYING.

12 **MR. REINES:** SAN LEANDRO.

13 **MS. GLAUSER:** HE RENTED A HOUSE.

14 **MR. REINES:** SAN LEANDRO.

15 **THE COURT:** OKAY.

16 **MR. REINES:** IT'S VERY DISTURBING, YOUR HONOR. I
17 THINK IT'S A BIG DEAL.

18 **THE COURT:** YOU WANT TO DEPOSE HIM?

19 **MR. REINES:** THERE'S NOW ADDITIONAL VERSIONS OF THIS
20 DOCUMENT. YES. WE WOULD HAVE IMPEACHED HIM IN FRONT OF THE
21 JURY ON AN ISSUE THAT THEY'VE MADE THEIR PRIMARY ARGUMENT.

22 **THE COURT:** THERE ARE SIMPLER SOLUTIONS THAN DEPOSING
23 HIM. WE COULD STRIKE THE DOCUMENT.

24 **MR. REINES:** THAT -- IF THE COURT -- WE PREFER THAT,
25 BUT WE ARE JUST TRYING TO GET TO THE BOTTOM OF IT. WE WOULD

1 BE VERY COMFORTABLE STRIKING THE DOCUMENT FROM THE RECORD.

2 **MS. GLAUSER:** YOUR HONOR, MAY I RESPOND ON THIS --

3 **THE COURT:** -- USE THE ONE THAT DIDN'T HAVE THE '670,
4 AND THEN YOU WOULD ARGUE THAT IF THEY DISCLOSED ANYTHING, IT
5 WAS ONLY THE '541 AND NOT THE '670. IT JUST SEEMS THERE'S
6 SIMPLER SOLUTIONS FOR THE TRIAL.

7 MAYBE IF YOU WANT SANCTIONS OR SOMETHING LIKE THAT, YOU
8 HAVE TO DEPOSE HIM, BUT IN TERMS OF MAKING IT THROUGH THE
9 TRIAL --

10 **MR. REINES:** FAIR ENOUGH.

11 **MS. GLAUSER:** YOUR HONOR --

12 **MR. REINES:** WE CAN --

13 (SIMULTANEOUS COLLOQUY.)

14 **MR. REINES:** LET ME STATE WHAT WE ARE SEEKING.

15 BASED ON WHAT WE KNOW NOW, WHAT WE WOULD SEEK, WHICH I
16 THINK MAKES A LOT OF SENSE, IS THE STRIKING OF EXHIBIT 125C
17 AND RELATED TESTIMONY. AND THE REASON IS VERY SPECIFIC.
18 UNDER 403 AND THE BEST EVIDENCE RULE, WE SAID ALL ALONG WE'RE
19 BEING GIVEN A VERSION OF WHAT HE SAYS HE SENT TO THE -- TO US
20 OF WHICH WE HAVE NO RECORD. AND WE NEVER GOT A GOOD
21 EXPLANATION OF WHY WE DIDN'T HAVE THE ORIGINAL, WHICH IS WHAT
22 THE BEST EVIDENCE RULE REQUIRES --

23 **THE COURT:** IT WAS SUBMITTED ONLINE. THERE IS NO
24 HARD COPY ORIGINAL.

25 **MR. REINES:** WELL, I MEAN YOU HAVE AN EMAIL WITH AN

1 ATTACHMENT.

2 **THE COURT:** IT WASN'T EMAILED. IT WAS TYPED INTO THE
3 WEB PAGE AS I UNDERSTAND IT.

4 **MR. REINES:** NO. THERE WAS AN EMAIL ADDRESS ON THE
5 WEBSITE.

6 **MS. GLAUSER:** MAY I RESPOND ON THAT, YOUR HONOR?
7 THERE WAS NO E-DISCOVERY IN THIS. THEY NEVER SOUGHT TO TAKE
8 E-DISCOVERY. THE PARTIES AGREED THAT THEY WERE GOING TO LIMIT
9 THE COSTS OF DISCOVERY HERE AND ONLY PRODUCE THE DOCUMENTS
10 THAT WERE IN THEIR POSSESSION, AND NOT DO ANY EMAIL SEARCHES.
11 SO THAT HASN'T BEEN DONE HERE.

12 THERE IS NO DEBATE FROM WHAT MR. REINES IS SAYING ABOUT
13 THE FACT THAT DOCUMENT 125C, THE ONE THAT MR. VENTERS
14 TESTIFIED HE CREATED IN 2004 WAS CREATED IN JULY OF 2004, AND
15 USED DURING HIS TELEPHONE CONVERSATION WITH ADOBE.

16 THAT'S THE DOCUMENT THAT THEY DOWNLOADED FROM THE
17 MACINTOSH AND THAT HAS BEEN PROVIDED. IT'S THE DOCUMENT THAT
18 HAS THE COMMENT BUBBLE, AND THE METADATA ON IT SHOWS THAT IT'S
19 JULY 2004.

20 **THE COURT:** WHAT HE'S SAYING IS THERE'S A VERSION OF
21 IT THAT DOESN'T ADDRESS THE '670 AND THAT THE VERSION THAT WE
22 WERE DEALING WITH DID ADDRESS THE '670.

23 SO WHY WOULD THERE BE A VERSION, IF THERE IS, AS HE SAID,
24 WHY WOULD THERE BE A 2004 VERSION THAT DIDN'T ADDRESS THE '670
25 PATENT?

1 **MS. GLAUSER:** THE '670 PATENT DIDN'T ISSUE UNTIL JUNE
2 OF 2004. SO TO THE EXACT THAT A DRAFT WAS MADE BEFORE THAT --

3 **MR. REINES:** THAT'S OUR ARGUMENT, YOUR HONOR.

4 **THE COURT:** SO THEN YOU'RE SAYING THE DOCUMENT YOU
5 GAVE DIDN'T ADDRESS THE '670, THAT NONE OF THE 2004 DOCUMENTS
6 ADDRESSED THE '670?

7 **MS. GLAUSER:** NO. THE 125C, THE DOCUMENT THAT WE
8 OFFERED INTO EVIDENCE AND THAT WAS ADMITTED HAS THE METADATA
9 OF 2004 ON IT.

10 **THE COURT:** DOES IT ADDRESS THE '670 PATENT?

11 **MS. GLAUSER:** AND THAT DOCUMENT DOES ADDRESS THE '670
12 PATENT.

13 **THE COURT:** SO WHY IS THERE ANOTHER DOCUMENT, AS HE
14 REPRESENTS, ALSO FROM '04 THAT DOES NOT ADDRESS THE '670
15 PATENT?

16 **MS. GLAUSER:** I BELIEVE BECAUSE THE METADATA ON THAT
17 ONE SHOWS THAT IT IS FROM JUNE 2004 BEFORE THE ISSUANCE OF THE
18 '670 PATENT.

19 **MR. REINES:** YOUR HONOR, THAT WOULD BE CRITICAL
20 CROSS-EXAMINATION OF THE WITNESS WHEN HE TESTIFIED THAT THE
21 MEETING TOOK PLACE IN JUNE THAT HE HAD A JUNE VERSION THAT
22 DOESN'T HAVE THE '670 PATENT. WE ARE NOT CONCEDING --

23 **THE COURT:** I'M SORRY. SO THE VERSION -- THE VERSION
24 THAT HE SAYS HE SUBMITTED AND THAT WE ALL LOOKED AT WAS FROM
25 JULY?

1 **MS. GLAUSER:** OF 2004, YES.

2 **THE COURT:** AND WHEN DID HE HAVE THIS CONVERSATION
3 WITH ADOBE?

4 **MS. GLAUSER:** HE TESTIFIED THAT IT WAS IN THE SUMMER.
5 IN FACT, MR. REINES ASKED HIM WHEN WAS THE '670 ISSUED? AND
6 HE TESTIFIED IT WAS IN JUNE OF 2004.

7 **THE COURT:** WHEN WAS THE CONVERSATION WITH ADOBE?

8 **MS. GLAUSER:** IN THE SUMMER. HE SAID HE CAN'T
9 REMEMBER THE MONTH --

10 **THE COURT:** JUNE OR JULY. THAT DOES SEEMS NOW TO BE
11 RATHER CRITICAL.

12 **MS. GLAUSER:** HE SAID IT WAS SHORTLY AFTER THE
13 ISSUANCE OF THE '670 BECAUSE HE RECALLS DISCUSSING THE '670
14 AND KNOWS THAT THAT WAS THE DOCUMENT THAT HE PRESENTED.

15 **MR. REINES:** YOUR HONOR, THAT'S DECEPTIVE. HE
16 TESTIFIED THAT IT WAS IN JUNE IN FRONT OF THE JURY.

17 **MS. GLAUSER:** HE DIDN'T. YOU ASKED HIM ON
18 CROSS-EXAMINATION. HE SAID THAT'S NOT WHAT I SAID. I SAID IT
19 WAS THE SUMMER.

20 **MR. REINES:** OKAY. WE WILL -- IF I CAN -- I WILL
21 DEMONSTRATE TO YOU THAT HE SAID JUNE. THAT'S FIRST OF ALL.

22 AND IN TERMS OF OUR POSITION, I NEED TO CLEAR THE RECORD
23 BECAUSE THIS IS VERY IMPORTANT TO US FOR OBVIOUS REASONS,
24 WHICH SHOULD BE MANIFEST.

25 I DO NOT AGREE THAT THE METADATA IS VALID BECAUSE WE HAVE

1 BEEN GETTING HANDED THESE DAISY CHAINS OF DOCUMENTS. I
2 BASICALLY DON'T AGREE THAT ANYTHING IS VALID ABOUT HOW THIS
3 DOCUMENT HAS BEEN PRODUCED TO US.

4 WITH RESPECT -- THERE'S THREE DOCUMENTS THAT THEIR
5 METADATA SHOWS IS FROM 2004, AND IT'S INCREDIBLY PREJUDICIAL
6 TO US THAT WE WEREN'T ABLE TO IMPEACH HIM WITH THEIR MULTIPLE
7 VERSIONS, INCLUDING ONE IN JUNE, WHICH WAS HIS ORIGINAL
8 TESTIMONY. I WOULD IGNORE THAT -- COUNTER ARGUMENT TO THAT.
9 AND THAT, IN FACT, HE DIDN'T TESTIFY -- KNOW ABOUT THE '670
10 PATENT.

11 THE FACT IS, WHAT DO I BELIEVE? I BELIEVE HE WAS MAKING
12 THAT ALL UP AND THAT HE SAID, I READ THE WHOLE DOCUMENT. HE
13 DOESN'T HAVE AN ACTUAL KNOWLEDGE OF WHAT HE SAID. HE WAS
14 USING THE DOCUMENT TO REFRESH HIM. AND THEY SELECTIVELY
15 PRODUCED THE DOCUMENT THAT SAID WHAT THEY WANT.

16 THE FACT THERE IS NO E-DISCOVERY IS NO JUSTIFICATION FOR
17 NOT PRODUCING OTHER VERSIONS THAT DON'T HAVE THE PATENT.
18 THAT'S JUST NOT EXCULPATORY IN ANY WAY.

19 **THE COURT:** I'M HEARING YOU SAY THAT YOU WOULD HAVE
20 IMPEACHED HIM. SO THE WAY TO DEAL WITH THAT WOULD BE TO BRING
21 HIM BACK AND GO AHEAD AND IMPEACH HIM.

22 THE WAY TO DEAL WITH THE FACT THERE WAS NO E-DISCOVERY
23 WOULD BE TO GET THAT EMAIL.

24 **MS. GLAUSER:** I DON'T KNOW IF IT'S POSSIBLE. WE CAN
25 LOOK INTO IT.

1 **THE COURT:** TRY AND SEE WHAT ACTUALLY WAS ATTACHED TO
2 THAT EMAIL IF IT EXISTS ANYWHERE.

3 **MS. GLAUSER:** I CAN FIND OUT. I DON'T KNOW WHETHER
4 THE 2004 EMAIL STILL EXISTS. IF THEY DO, IT WOULD BE GREAT
5 FOR US.

6 **THE COURT:** SO THEN THE FINAL QUESTION WOULD BE IS
7 THE DEPOSITION OF HIM IN THE MIDDLE OF THE TRIAL A USEFUL
8 EXERCISE OR SHOULD WE CALL HIM BACK AND PUT HIM ON THE STAND
9 AND YOU CAN ASK HIM WHATEVER YOU WANT.

10 **MR. REINES:** YOUR HONOR, I RETURN TO THE --

11 **THE COURT:** IF YOU WANT TO DO A DEPOSITION --

12 **MR. REINES:** I RETURN TO THE PROPORTIONAL RELIEF THAT
13 I REQUESTED, WHICH IS TO STRIKE THE DOCUMENT. TO HAVE THEM
14 NOW BRING NEW VERSIONS IN AND BACKFILL AND SAY WELL, WE HAVE
15 DOCUMENTS, WE HAVE METADATA IS INCREDIBLY PREJUDICIAL WHEN THE
16 WHOLE CASE --

17 **THE COURT:** WHY DON'T YOU SUBMIT ALL THE VERSIONS OF
18 THE DOCUMENTS WITH SOME KIND OF EXPLANATION OF WHICH IS WHICH
19 SO I CAN LOOK AT THEM.

20 **MR. REINES:** FAIR ENOUGH.

21 **THE COURT:** GIVE ME THE PAGE AND LINE OF WHEN HE
22 TESTIFIED ABOUT THEM, WHAT IT WAS THAT HE SAID. IF YOU WANT A
23 DEPOSITION OF HIM AND YOU WANT TO DO THAT TOMORROW OR OVER THE
24 WEEKEND, THAT'S FINE. OR WE CAN HAVE HIM COME BACK TOMORROW
25 OR TUESDAY AND GET ON THE STAND AGAIN.

1 **MR. REINES:** WE WILL TAKE HIS DEPOSITION, IF THAT'S
2 ALL RIGHT WITH THE COURT, AND WE'LL ALSO SUBMIT TO THE COURT
3 ALL THE DIFFERENT VERSIONS AND ALL OUR REASONINGS AS TO WHY WE
4 ARE PREJUDICED.

5 **THE COURT:** YOU NEED TO FIND -- SEE IF THAT EMAIL IS
6 ANYWHERE.

7 **MS. GLAUSER:** I WILL ATTEMPT TO DO SO.
8 YOUR HONOR, ONE MOMENT. THE TWO PRINTOUTS THAT YOU HAVE,
9 THE '670 IS IN BOTH.

10 **THE COURT:** I DON'T WANT TO DO THIS ON RAW DATA.

11 **MR. REINES:** THANK YOU.

12 **THE COURT:** SUBMIT WHAT YOU CAN COME UP WITH AND I'LL
13 TAKE A LOOK AT IT.

14 (PROCEEDINGS ADJOURNED IN 3:42 P.M.)

15 **CERTIFICATE OF REPORTER**

16 I, DIANE E. SKILLMAN, OFFICIAL REPORTER FOR THE
17 UNITED STATES COURT, NORTHERN DISTRICT OF CALIFORNIA, HEREBY
18 CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT FROM THE
19 RECORD OF PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

20
21 

22 DIANE E. SKILLMAN, CSR 4909, RPR, FCRR

23 FRIDAY, AUGUST 29, 2014
24
25